

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

EMILIO FUSCO,  
Petitioner/Defendant

vs.

Case No.: 09- cr-1239(PKC)

UNITED STATES OF AMERICA,  
Respondent

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MOTION FOR COMPASSIONATE RELEASE PURSUANT TO 18 U.S.C SECTION 3582(c)(1)(A)(i)

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COMES NOW, the defendant, Emilio Fusco, appearing pro-se, and respectfully requests that this Honorable Court to submitting his Motion For Compassionate Release, for a showing of "extraordinary and compelling reasons, and reduction in sentence" under 18 U.S.C. 3582(c)(1)(A)(i). In support of this motion this defendnat would offer the following in support:

PROCEDURAL HISTORY \*

Mr. Fusco was convicted of a racketeering conspiracy in violation of 18 U.S.C. Section 1962(d), and extortion conspiracy in violation of 18 U.S.C. Section 1951, and interstate travel in aid of racketeering in violation of 18 U.S.C. 1952 (a)(1) and (a)(3). The Government failed in its attempt to prove Mr. Fusco guilty respect to murder of the racketeering charge with the murders as predicate acts, also illegal gambling and loansharking, and one predicate act of murder charged in Count 1 of the indictment the government decided to withdraw the predicate act of murder ( i.e., the predicate act of murder of Adolfo Bruno), under 18 U.S.C. Section 1962(d). The jury acquitted Mr. Fusco of 18 U.S.C. Section 1962(c), a substantive Racketeering Influenced and Corrupt Organization ("RICO") charge, finding that the Government failed to establish his guilty with respect to the predicated acts of murder and conspiracy to murder Adolfo Bruno and Gary Westerman or extortion and conspiracy to extort James Santaniello. The jury also acquitted Mr. Fusco of making extortionate extensions of credit and using extortionate means to collect under 18 U.S.C. 892 and 894, and jury also acquitted Mr. Fusco of abetting in violation of 18 U.S.C. Section 2.

## PRO SE STANDARD

"In a pro se case, the court must view the submission by a more lenient standard, 'however in artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Govan v. Campbell*, 289 F. Supp.2d 289, 291 (N.D.N.Y. 2003); (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

## STANDARD OF REVIEW

The compassionate release statute, 18 U.S.C. 3582, as amended by the First Step Act of 2018 ("FSA"), authorizes sentencing courts to reduce a term of imprisonment if, after considering the applicable factors set forth in section 3553(a), it concludes that "extraordinary and compelling reasons warrant such a reduction" and that "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(1)(A). The defendant bears the burden of proving that he or she is entitled to a sentence reduction. *United States v. Morales*, 2020 U.S. Dist. LEXIS 77037, (D. Conn. May 1, 2020).

Unlike prior versions of the statute, which vested the exclusive authority to bring a motion for compassionate release with the Director of the BOP, section 3582(c)(1)(A) now permits imprisoned individuals to petition the courts for sentence reductions, even if the BOP opposes the request. See *United States v. Brooker*, 976 F.3d 228, 231-33 (2d Cir. 2020). The statute specifically instructs that a court may reduce a sentence "upon motion of the Director of Prisons, or upon motion of a defendant after the defendant has fully exhausted an administrative right to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from receipt of such a request by the Warden of the defendant's facility, whichever is earlier." *Id.*

As the Second Circuit recently announced in *Brooker*, district courts evaluating FSA Motions brought directly by defendants are therefore not bound by the U.S. Sentencing Guidelines Manual 1B1.13, which addresses only motions brought by the Director of the BOP. *Brooker*, 976 F.3d at 230, 235-37 ("Neither Application Note 1(D), nor anything else in the now outdated version of Guideline 1B1.13, limits the district court's discretion"). Instead, the *Brooker* Court concluded, the FSA authorizes courts to "consider the full state of extraordinary and compelling reasons that imprisoned person might bring before them. *Id.* at 237. "The only statutory limit on what a court may consider to be extraordinary is that '[r]ehabilitation ... alone shall not be considered an extraordinary and compelling reason.' *Id.* at 8. "Moreover, these (considerations) may also interact with the present coronavirus pandemic, which courts around the country, including in this Court, have used as a justification for granting some sentencing reduction motions." *Id.* at 9. Petitioner Fusco reasserts he presents "extraordinary and compelling reason" for this Court to GRANT him compassionate release.

A court evaluating a motion pursuant to 3582(c)(1)(A) must ask four questions: (i) Has the defendant complied

with the administrative exhaustion requirement; (II) has the defendant shown extraordinary and compelling reasons warranting a sentence reduction; (III) are the 3553(a) sentencing factors consistent with a lesser sentence imposed; and (IV) is there a particular sentence reduction consistent with the 3553(a) factors that is also warranted by extraordinary and compelling reasons?

#### I. ADMINISTRATIVE EXHAUSTION REQUIREMENT:

Petitioner Fusco has fully complied with the administration requirements of 18 U.S.C. 3582 by completing his Administrative Remedies on 01/18/2022 (See EXHIBIT - A, BP-11 Remedy Appeal).

#### II. EXTRAORDINARY AND COMPELLING REASONS:

Petitioner Fusco argues "extraordinary and compelling reasons" exist and are shown by the following: (a) Fusco's risk for reinfection from Covid-19 OMICRON Variant, which evades his vaccination status; (b) Fusco suffers from four co-morbidities listed by the CDC as placing him at high risk for sufferings severe effects from Covid-19; (c) FMC-Devens' current conditions of confinement that are in violation of CDC recommendations and deliberately indifferent to Petitioner Fusco's health & safety, violating Fusco's Eighth Amendment Right to be free from "cruel and unusual punishment."; (D) Independent assessment for compassionate release pursuant to the fair Sentencing Act the First Step and the provision 18 U.S.C. & 3582; (E) The District Court Committed Procedural and Substantively Unreasonable When Calculating Sentence Guidelines of 25 years; (F) Conspiracy to Distribute or Distribution of Marijuana no longer qualified as predicate offense under 1962(c); (G) Constitutional and statutory provision; and (H) The Five-Year limitation period of 18 U.S.C. 3282 had expired before the Grand Jury returned its indictment for a 21 U.S.C. 841(a) violation in violation of due process.

##### a. Risk Of reinfection From Covid-19 OMICRON Variant:

The Covid-19 OMICRON variant is currently sweeping the country at breathtaking speed, making a particularly inopportune time for Inmate confined in the Federal Bureau of Prisons and especially Petitioner Fusco, due to his prior severe reaction to Covid, numerous co-morbidities and current condition of confinement.

OMICRON was first detected in Africa on November 11, 2021 and was quickly classified as a variant of concern by both the World Health Organization and the U.S. Centers for Disease Control and Prevention. OMICRON has spread rapidly, and as of February 13th, has been detected in all 50 States, 110 Countries and the dominant strain found at FMC-Devens. Presently OMICRON account for 99% of all new infections.

Although studies are still ongoing, recent research revealed OMICRON is three times more likely than previous variants to cause breakthrough infections. See Sarah Wild, How the Omicron variant Got So many Scary Mutations

So Quickly, Scientific America (Dec. 3, 2021) <http://www.scientificamerican.com/article/how-the-omicron-variant-got-so-many-scary-mutations-so-quickly/>. More than 82% of adults in New York City are vaccinated, and yet in late December, the city repeatedly broke single-day records for positive tests, with cases doubling every three days. See N.Y. Times (Dec. 21, 2021); <https://www.nytimes.com/live/2021/12/21/world/covid-omicron-vaccines>. "[I]t is impossible to predict the impact of the vaccines on future strains of the virus, just as it is impossible to predict the impact of Covid-19 [s OMICRON Variant] on [Fusco's] special medical issues." United States v. Palmer, 2021 U.S. Dist. LEXIS 141837 (D. Md. Jul. 29, 2021).

The FBOP is not immune to the onslaught caused by the OMICRON Variant, new infection cases rose by 300% and OMICRON can now be detected in all Bureau of Prison facilities. FMC-Devens has self reported on 01/07/2022, 38-inmates were placed in medical isolation for testing positive and 19 staff tested positive for OMICRON; on 01/20/2022, 11-inmates and staff tested positive for OMICRON; and on 02/09/2022 19 inmates tested positive for OMICRON See EXHIBIT - B, Notifications Warden Boncher). Petitioner Fusco argues these are not the true numbers and FMC-Devens is deliberately hiding the extent of the breakout. See United States v. Jaber, 2022 U.S. Dist. LEXIS 1346 "After dealing with numerous compassionate release motions over the last many months, I have learned that BOP statistical reporting for a particular facility does not always comport with, and often understates the actual infection rate at that facility. Indeed, the current snapshot is likely not capturing the effect of the ongoing Omicron wave."

"Correctional and detention facilities 'present unique challenges for control of Covid-19 transmission among incarcerated/detained persons and staff.' According to public health experts, incarcerated individuals 'are at special risk of infection, given their living situations' and 'may also be less able to participate in proactive measures to keep themselves safe ... 'incarcerated/detained persons live, work, eat, study and recreate within congregate environments, heightening the potential for Covid-19 to spread once introduced.'" United States v. Wilson, 2020 U.S. Dist. LEXIS 72323 (E.D. Pa. Apr. 24, 2020).

Recognizing the risks posed by OMICRON in congregate settings courts have been granting defendants relief based in part on the presence of OMICRON and defendant's higher risk to the disease. See United States v. Rose, 2022 U.S. Dist. LEXIS 706 (S.D.N.Y. Jan. 3, 2022)(defendant suffered from obesity & hypertension); United States v. Dones, 2021 U.S. Dist. LEXIS 24953 (D. Conn. Dec. 22, 2021)(same); United States v. Mansourov, 2021

U.S. Dist. LEXIS 243906 (D. Conn. Dec. 22, 2021); United States v. Smith, 2021 U.S. Dist. Lexis 245662 (D. Md. Dec. 23, 2021)(defendant suffered from hypertension & mild asthma); United States v. Griffin, 2021 U.S. Dist. LEXIS 244190 (D. Md. Dec. 22, 2021)(defendant suffered from obesity & a compromised immune system). In brief, "considering the high level of infection at [FMC-Devens] ... the Court [should] err on the side of caution and find[] [Fusco's] special risk of reinfection appears to be heightened at [FMC-Devens]." United States v. Fernandez, 2020 U.S. Dist. LEXIS 185485 (E.D. Cal. Oct. 6, 2020).

#### Future Risk Posed To Fusco If Reinfected From Covid-19 Or Its New Variants.

On 03/15/2022, it was reported by the major news networks (ABS, CBS, CNN, FOZ & PBS) that there has been an up-tic in Covid-19 infections. The Government has been closely monitoring outbreaks in the Northeast and it is believed the majority of new infections come from Covid's new variant, the BA.2 Variant that currently accounts for 10% of all new infections. Additionally, it was reported the BA.2 Variant is 30X more trasmissible then the OMICRON Variant, which corresponds with the current high rate of infections/reinfections at FMC-Devens. This Court must consider the risks posed to Fusco by the BA.2. Variant, the foregoing comorbidities (immunocompromised, obesity & hypertension) and future strains of the Covid-19 virus, because of the serious threat posed to Fusco should he be reinfected and develop pneumonia again, could result in his untimely death. Since writing this inital brief, May 1st, 2022, BA.2 has now become the dominant strain and accounts for over 90% of all new infection and while it is speculated to be less dangerous then OMICRON, scientific data shows an increase in hospitalizations, especially those who are immunocompromised, like Fusco.

#### b. Fusco Suffers From Numerous Comorbidities That Leave Him Vulnerable To OMICRON:

The CDC has repeatedly revised its guidance as to medical conditions that pose a greater risk of severe illness due to Covid-19 to reflect the most available data, available to Fusco, see People With Certain Medical Conditions, CDC (Oct. 14, 2021), <http://bit.ly/38S4NFY>. "According to the CDC, the factors that increase risk include cancer; chronic kidney disease; chronic lung disease, including COPD, asthma (moderate to severe), bronchiectasis, bronchopulmonary dysplasia (chronic lung disease affecting newborns), interstitial lung disease, cystic fibrosis, and pulmonary embolism; pulmonary hypertension; dementia or neurological conditions; diabetes (Type 1 and Type 2); Down syndrome; heart conditions, such as heart failure, coronary artery disease, cardiomyopathy, and hypertension; HIV; being immunocompromised; liver disease; mood disorders, including depression and schizophrenia spectrum disorder; obesity, with a body mass index ("BMI") of 25 or higher; pregnancy; sickle cell disease or thalassemia; smoking (current or former); solid organ or blood stem cell transplant; stroke or cerebrovascular disease; substance use disorder; and tuberculosis ... Furthermore, the CDC cautions that the



'risk of severe COVID-19 increases as the number of underlying medical conditions increases in a person'

Certain Medical Conditions, *supra*." United States v. Tinsley, 2021 U.S. Dist. LEXIS 211566 (D. Md. Nov. 2, 2021).

Petitioner Fusco suffers from no less than four (4) of the medical conditions, listed by the CDC, that place him a greater risk, those being: (1) Chronic lung disease, specifically "bronchiectasis," as a result of contracting Covid-19 in December 2020; (2) Fusco is classified as "immunocompromised," due to the prolonged use of corticosteroids; (3) "Hypertension", also result of contracting Covid-19 in December of 2020; and (4) Fusco is "obese," with a BMI of 35.3.

#### 1. Fusco's Chronic Lung Disease - Bronchiectasis:

After contracting Covid-19, in December of 2020, Fusco on 07/08/2021, was diagnosed by Dr. Megan Shaw with "bronchiectasis" a "chronic lung disease" (See EXHIBIT - C, CT-Scan Report Dr. Shaw). "Bronchiectasis is defined as 'a condition in which damage to the airways causes [the lungs] to widen and become flabby and scarred.' The condition is generally predicated by an infection, causing 'the airways lose their ability to move in and out.'" Scrine v. Comm's Of Soc. Sec., 2016 U.S. Dist. LEXIS 19591 (D. Mich. Jan. 16, 2016). The report also revealed "advanced fibrotic changes," e.g., Pulmonary Fibrosis.

As stated by the CDC "chronic lung diseases" pose a greater risk of suffering severe effects from Covid-19. Courts in this Circuit and others have recognized defendant's with chronic lung disease in the context of Covid-19 as "extraordinary and compelling reasons" for compassionate release. See United States v. Foster, 2020 U.S. Dist. LEXIS 82985, \*12 (M.D. Pa. Apr. 3, 2020) (Defendant Foster suffered from bronchiectasis and the court found, with regards to his renewed/second Motion for Compassionate Release, "the Defendant has a chronic lung disease that very well may equate a Covid-19 diagnosis with a death sentence. As we stated in our previous Covid-19 opinion, '[i]f we are to remain the civilized society we hold ourselves out to be, it would be heartless and inhumane not to recognize' Defendant's grim predicament"). Thacker v. Doll, 451 F.Supp. 3d 358 (M.D. Pa. Mar. 31, 2020). ("We therefore find that the unparalleled present global pandemic tips the scale in favor of Defendant's release."); See also, United States v. Hernandez, 451 F. Supp. 3d 301, 304 (S.D.N.Y. Apr. 2, 2020) ("Covid-19 presents a heightened risk for incarcerated defendants like [Fusco] with respiratory ailments ..."); United States v. McCarthy, 453 F.Supp. 3d 520, 523 (D. Conn Apr. 8, 2020) (Granting relief to McCarthy who suffered from "well-documented and serious" lung related ailments beyond just asthma ..."); See

also collecting cases, *United States v. Gentile*, 2020 WL 1814158, at \*4 (S.D.N.Y. Apr. 9, 2020); *United States v. Smith*, 454 F.Supp 3d 310 (S.D.N.Y. Apr. 13, 2020).

2. Fusco Is Immunocompromised:

Fusco is immunocompromised. Fusco, after contracting Covid-19, is prescribed Albuterol Inhaler HFA, taken every 4 hours; and Mometasone Furoate Inhal 220 MCG/Inh, take 2x per day. Fusco has been taking these medications for over 6+ months (See EXHIBIT - D, FMC-Devens Medication Order). Both are classified as Corticosteroids and used to treat Fusco's "chronic lung disease," e.g., bronchiectasis. The CDC warns those who engage in "prolonged use of corticosteroids or other immune weakening medicines can lead to secondary or acquired immunodeficiency ... Additionally, persons with weakened immune systems from prolonged use of corticosteroids, persons who are obese and persons with hypertension, can be more likely to become severely ill from covid-19." Goto <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Sept. 7, 2021).

The fact Fusco is classified as immunocompromised has a direct effect on the reliability of the present Covid-19 vaccines. See *United States v. Sandoval*, 2021 U.S. Dist. LEXIS 32750 (W.D. Was. Feb 22, 2021), where the court granted compassionate release in large part due to the testimony of Expert Witness Robert Rakita, M.D., the Clinical Professor of Medicine at the University of Washington, provided an expert opinion relating to Sandoval's likelihood of reinfection from Covid-19. Sandoval, like Fusco, is classified as immunosuppressed, due to medications. Dr. Rakita opined in relevant part:

"Significantly fewer immunosuppressed patients developed antibodies to SARS-CoV-2 [] compared to the general population ... While 95% of the overall population develops SARS-CoV-2 antibodies, 30-35% of people taking immunosuppressive medications [] do not develop those antibodies. This suggests that the risk of reinfection is likely higher in those patients, such as Sandoval [and Fusco] ... The efficacy of the vaccine[s] in various subpopulations, such as immunosuppressed individuals, is still unknown. Other vaccines, such as the influenza vaccine and hepatitis B vaccine, have dramatically decreased response in immunocompromised patients. Sandoval [and Fusco], have through case specific experts, made a showing that [they have] a different reinfection risk than the general population and that [they] remain [] susceptible to reinfection." *Id.*

Fusco makes this point because it is unknown if future strains will evade vaccines and any future vaccinations may not be effective in keeping Petitioner Fusco safe from infection. This is particularly troubling for Fusco, due to his being incarcerated, unable to socially distance or seek particularized/individualized medical care and/or treatments not afforded him in the FBOP.

### 3. Fusco Suffers From Chronic Hypertension:

Defendant Fusco suffers from chronic hypertension, a diseases listed by the CDC as placing an individual at higher risk from the effects of Covid-19. This new diagnosis is a direct effect of Fusco contracting Covid-19 in December of 2020. As a result, Fusco is prescribed lisinopril 10mg 1X per day. (See EXHIBIT - D, Medication Order). The most common morbidity among hospitalized Covid-19 patients in the United States is those who suffer from hypertension, roughly 50%. See Clinical Guidance For Management Of Patients With Confirmed Coronavirus Disease - [www.cdc.gov](http://www.cdc.gov). For many courts, this strong correlation has been sufficient to find that Covid-19 poses a heightened risk to hypertensive inmates, for the purposes of compassionate release. See *United States v. Forman*, WL 2315908, at \*3-4 (D. Conn. May 11, 2020)(citing New York Statistical Reports Hypertension + Covid-19); *United States v. Pena*, 2020 WL 2301199, at \*4 (S.D.N.Y. May 8, 2020).

This Court must take into consideration these new medical conditions (bronchiectasis, immunocompromised & hypertension) which Petitioner Fusco will be suffering from long after he is released, (resulting from Fusco contracting Covid-19), when weighing the 3553(a) factors, as "the Court did not intend for [Fusco's] sentence to include incurring a great and unforeseen risk of serious illness or death brought on by a global pandemic." *United States v. Zuckerman*, 451 F.Supp. 3d 329 (S.D.N.Y. Apr. 3, 2020). "That a punishment which includes the risk of serious illness or death 'is greater than necessary to advance the purposes of sentencing' as reflected in the 3553(a) factors." *United States v. Salvagno*, 456 F.Supp. 3d 420 (N.D.N.Y. Apr. 23, 2020).

### 4. Fusco Is Obese:

Fusco is obese, having a Body Mass Index of 35.15, based on his weight of 235lbs. and being 5', 9" in height, classifying Fusco as Obese - Class 1, high to very high risk. The CDC defines obesity as a BMI of 30.0 or higher, with "[o]besity frequently subdivided into categories." *Id.* CDC Guidance - People With Certain Medical Conditions. Courts have declined to find less risk of severe illness because a defendant's BMI is at the lower end of the BMI obesity range. See e.g. *United States v. Moon*, 501 F.Supp 3d 731, 733 (N.D. Cal. 2020)(finding that "a BMI of 30.7 increases the risk of severe illness from Covid-19); *United States v. Sexton*, 2021 U.S. Dist. LEXIS 104799 (W.D. Was. June 3, 2021)(finding "BMI of 31.28 to be a factor increasing the defendant's vulnerability to the virus"). As cited in Fusco's argument "OMICRON" the majority of cases cited reference "obesity" as one of the key factors for relief, e.g. *Rose & Griffin*.



The foregoing conditions cumulatively places Fusco at even greater risk from severe effects should he be reinfected and the Court needs to weigh all Fusco's conditions as well as individually when assessing whether he has presented "extra ordinary and compelling reasons" for relief. See United States v. Newton, 966 F.3d 485 (7th Cir. 2021)(suggesting that district courts should consider the risk of severe illness from Covid-19 posed by an individual's underlying health conditions cumulatively in addition to individually and finding a district court abused its discretion in concluding that a movant was not at risk when he had multiple conditions the CDC stated might increase risk of serious illness ... "district courts must base factual conclusions on record evidence; they cannot render unsupported medical opinions").

In sum, Defendant Mr. Fusco has presented CDC Guidance, Court Ruling/Opinions and Expert Testimony that show: The OMICRON variant is more transmissible; the OMICRON variant evades the current vaccines effectiveness; those who are immunocompromised are at higher risk of reinfection, due to the vaccines not being as effective on them; Fusco suffers from four comorbidities listed by the CDC as putting an individual at higher risk for suffering severe effects from Covid-19, and if he were to be reinfected Fusco could not "provide self care"; Petitioner Fusco already contracted Covid-19 in December of 2020, shortly after this Court denied his Motion For Compassionate Release, which has had a dramatic effect on his "daily living"; Fusco suffered significant lung injuries, that will last the rest of his life and now suffers from hypertension (which causes damage to an individual's kidneys and heart); Fusco is now classified as immunocompromised/ immunosuppressed, due to two-corticosteroids he takes for his lung diseases, that place him at greater risk; Prisons are ill equipped to prevent the spread of Covid-19, due to inmate living in close quarters. The foregoing facts make a clear showing of "extraordinary and compelling reasons" for compassionate release.

c. Fusco's Present Conditions Of Confinement Violate The Eighth Amendment:

Petitioner Fusco argues his current conditions of confinement make it impossible to protect himself from Covid-19's OMICRON Variant, due to overcrowded conditions of confinement, FMC-Devens failure to conduct adequate testing & failure to conduct close contact isolation for inmates exposed to OMICRON, in violation of CDC protocols, that have resulted in continuous outbreaks (See EXHIBIT - B) and unreported infections.

"EXECUTIVE ORDER 13391 of January 2021 - Protecting The Federal Workforce And Requiring Mask-Wearing," in relevant part states: [T]o protect the Federal workforce and individuals interacting with the Federal workforce,

and ensure the continuity of Government Services and activities, on-duty or on-site Federal employees, on-site Federal contractors, and other individuals in Federal buildings and on Federal lands should all wear masks, maintain physical distance, and adhere to public health measure as provided in CDC Guidance."

From October 2021 to present FMC-Devens has been repopulating its facility to pre-pandemic numbers, by accepting Federal Immigration Detainees from recently closed private prisons across the land. It is upon information and belief Devens has received over 200+ Immigration Detainees. Subsequently, all cell in Unit JA are occupied (double celled) and Fusco is assigned a cellmate. When JA-Unit was first opened in 1996 it was designed to hold 64-inmates, due to the influx of immigration detainees JA-Unit is at capacity, holding 124+ inmates.

On 02/04/2022, inmates John Ott, Ryan Hernandez (cell 332), Rashad Butler (cell 327) and on 5 other inmates from JA-Unit were taken to Devens SHU and placed under "medical isolation" after testing positive for Covid-19 (OMICRON). JA-Unit was not placed under "close contact quarantine" nor tested for Covid-19; on 02/07/2022, Inmate Gomez and his cellmate (cell 111) were removed to the SHU and placed under "medical isolation" after Gomez tested positive for Covid-19. JA was not placed under "close contact quarantine" nor tested for Covid-19; and on 02/09/2022+, Inmates Frazier, Davilla, Bradly and an unknown Inmate were placed under "medical isolation", and taken to the SHU. JA was not placed under "close contact quarantine" nor tested for Covid-19. All the foregoing inmates had close contact with the entire inmate population, to include Inmate Fusco, who at "higher risk" for sufferings severe effects from Covid-19.

Recognizing the vulnerability of inmates, the CDC made specific recommendations, in part: "Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals regardless of the presence of symptoms)...Housing: if space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions ...Cohorting refers to housing inmates together rather than in single cells. If cohorting close quarters is absolutely necessary, be especially mindful of those who are at increased risk from Covid-19 [e.g., Petitioner Fusco]. Ideally they should not be cohorted with other[s] [e.g., "double celled"]. Testing: When an inmate or group of inmates is/are exposed to Covid-19, they are to be placed into what the CDC refers to as "close contact quarantine". The CDC Guidance states "[i]f quarantine cohorts are used (i.e., if people who are exposed are quarantined together rather than individually due to space constraints), facilities should conduct serial re-testing of quarantined cohort." This cohort testing is to be conducted "every 3-7 days regardless of their Covid-19 vaccination status until testing

identifies no new cases in the cohort for 14-days since the most recent positive result." See Interim Guidance on Management Of Coronavirus Disease 2019 (COVID-19) In Correctional And Detention Facilities, <http://www.cdc.gov/coronavirus/2019ncov/community/correctiondetention/guidance-correctional-detention.html> (last visited Aug. 12, 2021). Petitioner Fusco states he is unable to socially distance himself from other inmates, protecting himself from reinfection, due to JA-Unit being overcrowded and being forced to "cohort" with another inmate. FMC-Devens has failed to conduct close contact trace testing & close contact isolation of inmates exposed to OMICRON, all three are in violation of CDC recommendations and Executive Order 13391.

"CDC Guidance provides guidance regarding the appropriate response to the risk presented by Covid-19. The suggestions laid out in the CDC Guidelines represent expert medical advice regarding measures needed to limit the spread of Covid-19. An institution that is aware of the CDC Guidelines and able to implement them but fails to do so demonstrates that it is unwilling to do what it can to abate the risk of spread of infection. In other words, failure to comply demonstrates deliberate indifference towards the health and safety of inmates. See *Wilson v. Williams*, 455 F.Supp 3d 467 (N.D. Ohio Apr. 22, 2020) (finding Defendant's acted with deliberate indifference, where despite some proactive measures by Defendants, the prisoners were unable to socially distance and where the prison had 'shockingly limited available testing...') It is not enough for [Devens] to nominally comply with some portions of the Guidance sometimes so that the can claim 'we are testing' and 'we are providing soap' they must fully and consistently comply so that compliance is an effective tool to abate the spread of the virus." *Alman v. Barnes*, 445 F.Supp 3d 671 (C.D. Cal. 2020); See also *Helling v. McKinney*, 509 U.S. 25, 33 (1993), where the Supreme Court condemned the FBOP's failure to separate prisoners' with contagious diseases from others. See also *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 2006) ("[C]orrectional officials have an affirmative obligation to protect inmates from infectious diseases").

The fact FMC-Devens has thumbed their nose at CDC guidance and failed to follow mandates enacted to protect "individuals interacting with the Federal workforce," and Fusco's "health & safety" are "extraordinary and compelling reasons" why this Court should order Petitioner Fusco's Sentence, reduced to time served, and Order his immediate release. The pertinent question is can a court, after an inmate has shown "extraordinary and compelling reasons", impose a sentence known to be in violation of the Eighth Amendment.

D. Independent Assessment For Compassionate Release Pursuant  
To The Fair Sentencing Act The First Step Act And  
The Provision 18 U.S.C. 3582(C)(1)(A)

This Circuit agrees that USSG 1B1.13 does not apply to a motion for Compassionate Release filed by inmates see *United States v. Brooke* 976 F.3d 228 (2d. Cir. 2020); *United States v. Mc Coel* 981 F.3d 271 (4th Cir 2020); *United States v. Shrambe* 993 F.3d 388 (5th Cir 2021); *United States v. Jones* 980 F.3d 1098 (6th Cir. 2021); *United States v. Hunm* 980 F.3d 1178 (7th Cir. 2020); *United States v. Aruda* 993 F.3d 797 (9th Cir. 2021); and *United States v. McGee* 992 F.3d 1035 (10th Cir 2021. because 1B1.13 is not applicable where an inmate files a motion on his own behalf "[u]ntil the policy statements] to collect the First Step Act, District Courts have full discretion in the interim to determine whether to an Extraordinary and Compelling reason justify a Compassionate Release whether on imprisoned person files a 3582 (C)(1)(A) motion James 980 F 3d at 1109, See *United States v. Maumall* 993 F.3d 821 (10th Cir 2021)(Concluding that Congress did not by way of 994(f), intend for the Sentencing Commission to exclusively define the phrase extraordinary and compelling reason, but rather for the Sentencing Commission to describe those characteristic or significant qualities or features that typically constitute extraordinary and compelling reasons.

However, Congress in the First Step Act granted the Trial Judge Broad authority - infact imposed a statutory duty upon a defendants motion - to conduct an individualized review of the defendants case. For Extra ordinary and Compelling circumstance that call out for correction, See *Moumall* 993 F.3d 821, 2021 WL 1217855, at \*12 (holding that the District Court had discretion to grant Compassionate Release after an individualized review of all the circumstances of the case, including the "incredible length" of the defendante's, &924(C) stacked sentences); *Booker* 976 F.3d at 237-38 (holding that a court should consider "all possible reasons for Compassionate Release", including the "injustice of [a 'defendant's] lengthy sentence".

With Congress's intent layed out, Mr. Fusco will raise a number legal and sentencing error that have prejudiced him by increasing his sentence and in some instances violating his constitutional rights under the 5th and 6th Amendments. Mr. Fusco also contends that there is a growing consensus among courts that these are few if any limitation on what may be consedered an extraordinary and compelling reason warranting release, even those claims that have been rejected on direct appeal on collateral attack. See, e.g., *United States v. McGee* 992 F3d 1035, 2021 WL 1168980, at \*1-2 (10th Cir. 2021) (holding that a District Court would have authority to grant relied

where the defendant sought relief from a mandatory life sentence that had been upheld on direct appeal and withstood collateral attacks); *United States v. Cano*, No. 95-00481-CR, 2020 U.S. Dist. Lexis 239859 (2020 WL 7415833, at \*5-6 (S.D. Fla. Dec. 16, 2020)) (granting compassionate relief where the defendant claims in part that the Court erred in sentencing him to life imprisonment and that claim had been rejected on direct appeal and collateral attacks") See *United States v. McCoy*, 981 F.3d 271, 288 (4th Cir. 2020) (noting that 3582(C)(1)(A) 'represents Congress's judgement that generic interest in finality must give way in certain individual cases,' and authorize judges to implement that judgement" (Quoting *United States v. Jones*, 482 F. Supp. 3d 969, 980-8 (N.D. Cal. 2020)). Thus Mr. Fusco contends that these are no statutory bars on limitations on the constitutional and sentencing issues. He well demonstrated to the Court for its independent assessment as to whether he has presented extraordinary and compelling circumstances, warranting relief where Congress has directed through the First Step Act that the District Court should use its discretion; to either grant compassionate release or reduce a sentence where the movant establishes "extraordinary and compelling" circumstances and 18 U.S.C. 3553(a) sentencing factors weigh in favor of release.

#### Pertinent Statement of Facts

After a Jury Trial, the Jury convicted Mr. Fusco of Count 1 Racketeering conspiracy violation of 1962(d); Count 3 an extortion conspiracy in violation of 1951 and Count 5 interstate travel in the aid of racketeering in violation of 1952.

Count 2: Of which Mr. Fusco acquitted charged racketeering in violation of 18 U.S.C. with predicate acts of 1962(c) and extortion in violation of 18 U.S.C. 1951 with respect to this substance count racketeering influence and corrupt organization act (RICO) requires the government to prove the elements of his guilt with respect to the predicate acts of murder and conspiracy to murder Adolfo Bruno and Gary Westerman or extortion and conspiracy to extort James Santaniello and conspiracy to distribute Marijuana of the four predicate acts the Jury only found (one 1) conspiracy to distribute Marijuana was proved beyond a reasonable doubt.

The Court concluded by the preponderance of the evidence that the government had proved that Mr. Fusco had participate in the murder of Bruno and Westerman and adjusted the base offense level at 45, using 2A1.1 cross reference under the guideline, which resulted in life imprisonment reduce it to 45 years the statutory maximum and sentenced Mr. Fusco to 25 years using the preponderance of the evidence and acquitted conduct.

Mr. Fusco's Jury verdict was totally disregarded, see *Demich v. Schiedt*, 293 U.S. 474, 486, 79 LEd 603 (1935) ("maintain of the Jury as a fact finding body is of such importance and occupies so from a place in our



history and jurisprudence that any seeming curtailment of the right to the Jury trial should be scrutinize with the utmost care"); Mr. Fusco contends like most sentences of the Supreme Court and Congress that sentence defendants for acquitted and/or uncharged conduct violate the 5th and 6th Amendments, see Senate Bill 601 ("SB 601") which was introduced in the 117th congress (2021-2022) and passed the House 405 to 12, by Senator Richard Dubin, Chairman of the Senator Judiciary Committee, titled the "Prohibiting Punishment Of Acquitted Conduct act 2021".

Mr. Fusco argues that 1962(c) requires that the Jury finds at least two of the four aggravated elements that the government submitted to the Jury. The Jury's verdict proves the the government failed to prove two elements as required by the statute - 1962(c). The court violated Mr. Fusco's Sixth Amendment right to a Jury Trial and Verdict, where the court used the preponderance of the evidence standard to find the two predicate elements - finding him guilty and using the guideline 2A1.1 to sentence him for an offence - 1962(c) that the Jury did not convict him of. The Court used the cross reference to arrive at an offense level of 45, which requires a life sentence, The statutory maximum for that offense conviction was 45 yeras. The Court tried to compensate by sentencing Mr.Fsuo to 300 months - (25) years.

Mr. Fusco argues that not only was his constitutional right violated but a misapplication of the guidelines formed the basis of his sentence. The misapplication of the guidelines clouded his offense level, making it substantively unreasonable and therefore illegal. The Supreme Court has held that a substantively unreasonable penalty is illegal and must be set aside, it unavoidably follows that any fact neccessary to present a sentence from being substantively unreasonable -- thereby exposing the defendant to the longer sentence - is an element that must be either be admitted by the defendant or found by the jury, it may not be found by a Judge ... See Jones v. United States 135 S.CT. 8 (2014). Here the jury did not find the necessary elements to find Mr. Fusco guilty of 18 U.S.C. Section 1962(c) or the enhancements and the governmnet did not present an clear and convincing evidence to the Court for its preponderance of the evidence determination the requirement that a jury, not a Judge, find facts fixing the permissible sentencing range applies to statutory limitations; it is hard to understand why the same principle would not apply to dramatic departures from the sentencing Guidelines range based on acquitted conduct. After all, the Supreme Court has held that, as a matter of law, a sentence within the guidelines range is presumptively reasonable and lawful, and any 'major departure' from that range requires 'significant justification.' (citing Gall v. United states, 552 U.S. 38(2007), because the sentencing Guidelines have the 'force the framework for sentencing', Peugh v. United States 133 S. Ct. 2071, 2083 (2013), and because, in the usual case, 'the Judge will use the guidelines

range as the starting point in the analysis and impose sentence within the range, *Freeman V. United States*, 131 S. Ct. 2685, 2692 (2011), the guidelines demark the de facto boundaries of a legally authorized sentence in the main stream of cases. Given that reality, the Sixth Amendment should not tolerate the use of acquitted conduct "specifically rejected by the jury" to provide the required "significant justification for increasing a defendant's sentence, see *United States V. Bell*, 808 F.3D 926 (D. C. Cir 2015).

Mr. Fusco further argues that the violation of his Fifth and Sixth Amendment rights and the significant errors in his sentencing guideline calculation which resulted in a substantively unreasonable sentence and the absence of any avenue to correct the errors constitute an extraordinary and compelling reasons for a sentence reduction. In fact the relief propose of 18 U.S.C. 3582 (C)(1)(A) is to provide a 'Safety Valve' that allows for sentencing reduction when there is not a specific statute that already affords relief but "extraordinary and compelling" reasons nevertheless justify a reduction. To correct sentencing errors. See, e.g., *United States v. Lopez*, No. 11-CR-658 (P. Keven Castel), 2021 U.S. Dist LEXIS 36681, 2021 WL 761850, at \*4 (S.D.N.Y. Feb. 26, 2021) (holding that "the significant error in [the defendant's Guidelines calculation] and the absence of any other avenue to correct th[e] error constitute[s] an 'extraordinary and compelling reason' for sentence reduction"); *United States v. Wahid*, 2020 U.S. Dist. LEXIS 146851, 2020 WL 4734409, at \*3 (N.D. Ohio Aug. 14, 2020) (granting compassionate relief where the defendant was classified as a career offender and subsequent case law clarified that classification was in error).

E. The District Court Committed Procedural Error and Substantively Unreasonable When Calculating Mr. Fusco sentencing Guidelines of 25 years.

After *Booker*, appellate courts "review a district court's sentencing decision for reasonableness; a sentence must be remanded if it is either substantively or procedurally unreasonable." *United States v. Rattoballi*, 452 F.3d 127, 131-32 (2d Cir. 2006)(Citing *United States v. Crosby*, 397 F.3d 103, 113-15 (2d Cir. 2005)).

A sentence is procedurally unreasonable if the district court committed a "significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C.] 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *United States v. Kestenbaum*, 552 Fed. Appx. 74, 76 (2d Cir. 2014)(citing *Gall*, 552 U.S. at 51; internal quotation marks omitted). A sentence is substantively unreasonable when it is "shockingly high, shackling low, or otherwise unsupportable as a matter of law." *United States v. Rigas*, 583 F.3d 108, 123 (2d Cir. 2009).

Mr. Fusco contends that each time the Probation Department calculated it came up with an offense level as follows: Group 1: Racketeering conspiracy; 18 USC 1962(d) Count 3 extortion Conspiracy and Count 5 Interstate travel in aid of Racketeering base offense level: the guidelines applicable to the offense charged is 2B3.2, which provided for a base offense level of 18, pursuant to 2B3.2(a) because the specific offense characteristic: because the extortionate conduct involved an express or implied threat of death, bodily injury or kidnapping, two (2) levels are added pursuant to 2B3.2(b)(1): because the extortionate conduct exceeded \$250,000, three levels are added, pursuant to 2B3.2(b)(2) and 2B3.1(b)(7)(D). There was no victim related adjustment. The government contended that Mr. Fusco was an organizer, leader, manager and supervisor in some of the extortion schemes, particularly the dumpster extortion business that he operated. Pursuant to 3B1.1(c), adjusted offense level 25. See, e.g., *United States v. Lin Guang*, 511 F.3d 110 (2d Cir 2007) ("There is, however, insufficient records evidence to warrant a finding that the assault resulted in substantial impairment that was likely to be permanent".) See also, *United States v. Spinelli*, 352 F.3d 48, 60 (2d Cir 2003); *United States v. Molina*, 1997 U.S. App. LEXIS 7134 (2d Cir. 1997).

Group 2: Racketeering Act Four Narcotics Trafficking base offense level. Jury did not specify a

specific quantity of Marijuana and do the defendant was convicted of violating 21 U.S.C. 841(b)(1)(D), the base level offense level is 20 pursuant to 2D1.1(c)(10) adjusted offense is 20. Multiple count adjustment (see 3D1.4) Units adjust offense level for group 1, 25 unit 1 adjusted offense level for group 2, 20, 1/2. Greater adjusted offense level 25. increase an offense level is 1 combined adjusted offense level is 26.

Additional points for finding of \$250,000 gain and participation in a dumpster business and extortion of vending machine business and marijuana. The District Court also allowed for additional points on the extortion charges concerning Mr. Fusco's participation in a dumpster business and for a finding that more than \$250,000 was extorted from James Santaniello the trial court added three additional points. The evidence a trial, however, was that Mr. Fusco never threatened Santaniello and that Fusco was in prison when this took place (2004). (April, 2012, Id. at 375: 1-2 and 375:23-25.) The Jury Found Mr. Fusco Not Guilty Count Four under 18 U.S.C. 1951 Sections 892 and 894. (Jury Verdict May 2, 2012).

The three point enhancement was not warranted on the basis that the extortion proceeds were more than \$250,000 because there simply was not any evidence that it was Emilio Fusco that was extorting Santaniello. The testimony at trial was that it was John Bologna ( Mr. Bologna was confidential informant for different law enforcement agencies since 1996), Felix Tranches and Anthony Arillotta that threatened and extorted Santaniello and the strip clubs that he owned. See United States v. Lin Guang, 511 F.3d 110 (2nd 2007).

Additionally, there was no evidence that that Mr. Fusco ever received any proceeds from vending machine business (Mr. Fusco was not charged with vending machine) or that he extorted anyone through the dumpster business.

The evidence concerning Mr. Fusco receiving proceeds from any of the extortionate conduct was hearsay through the testimony of Arillotta and not evidence beyond reasonable doubt. The sworn affidavit statement from Mr. Manzi he never delivering money to Fusco's wife while Fusco's was incarcerated, (Civ. Doc. 15cv-9354) the affidavit carried a higher level of credibility than Arillotta's testimony because Mr. Manzi is a neutral and objective party whereas Arillotta was testifying pursuant to a cooperation agreement with the government which he benefited from.

The Supreme Court has instructed that "[w]here a defendant is sentenced under an incorrect guidelines range - whether or not the defendants ultimate sentence falls within the correct range - the error itself can and - must often will, be sufficient to show a reasonable probability of a different outcome absent

the error." *Molina-Martinez v. United States* 136 S.Ct. 1338, 1345, 1949 LEd 2d 444 (2016)(quoting *United States v. Dominguez Benítez* 542 U.S. 77, 76, 82, 159 LEd 2d 157 (2004).

Mr. Fusco contends that violation of his Fifth and Sixth Amendment right and the significant errors in his sentencing guideline calculation which resulted in a substantively unreasonable sentence and the absence of any avenue to correct the errors constitute extraordinary and compelling reasons for a sentence reduction. In fact the relief proposed of 18 U.S.C. 3582 (C) (1)(A) is to provide a 'Safety Valve' that allows for sentencing reduction when there is not a specific statute that already affords relief but "extraordinary and compelling" reason nevertheless justify a reduction. To correct sentencing errors. See, e.g., *United States v. Lopez*, No. 11-CR-568 (P. Kevin Castel), 2021 U.S. Dist. LEXIS 36681, 2021 WL 761850, at \*4 (S.D.N.Y. Feb. 26, 2021)(holding that "the significant error in [the defendant's Guidelines calculation] and the absence of any other avenue to correct th[e] error constitute[s] an 'extraordinary and compelling reason' for sentence reduction"); *United States v. Wahid*, 2020 U.S. Dist LEXIS 146851, 2020 WL 4734409, at \*3 (N.D. Ohio Aug. 14, 2020)(granting compassionate relief where the defendant was classified as a career offender and subsequent case law clarified that classification was in error).

Mr. Fusco contends in this case "the failure to correct a plain guideline error that affects his substantial right will seriously affect the fairness integrity and public reputation of the Judicial proceedings, *Resale's Mereles v. United States*, 138 S.Ct. 1897 (2018). Mr. Fusco respectfully contends that he is entitled to re-sentencing without erroneous offense level enhancement.

F. Conspiracy to Distribute or Distribution of Marijuana no longer qualified as a predicate offense under 18 U.S.C. Section 1962(c)

The predicate offense that the Jury found for the racketeering conspiracy was the conspiracy to distribute Marijuana. Mr. Fusco contends his conviction is logically overboard because his state Marijuana charge is not a categorical match and does not qualify as a controlled substance offense. Mr. Fusco contends that this may be a case of first impression in this Circuit. Prior to 2018, the federal CSA defined "Marijuana" to include hemp. The Statutory definition included "all parts of the plants cannabis sativa L." Except certain minor components such as the mature stalks of the plant and sterilized seeds incapable of germination see 21 U.S.C. 802 (16)(2012). Because hemp is a cannabis sativa plant, the CSA definition of marijuana included hemp See e.g. *Kemp industry association v. DEA*, 333 F3d 1082, 1085 R 2 (9th Cir 2003).

On December 20, 2018, the president signed into law the Agricultural Improvement Act Pub L. 11533 of 132 Stat 4490. The act removed "hemp" from the schedule of controlled substances specifying that



[t]he term marijuana does not include - (i) hemp as defined in section 16390 of title 7" 21 U.S.C. (16); See also 12619, 132 stat at 5018 section 16390 defines hemp as "the plant *cannibus saliva* L. and any parts of that plant ... with a delta -9 tetrahydrocannabinol concentration of not more than .3 percent of any weight basis" 7 U.S.C. 16390 (i) See also section 10113, stat at 4908. The law contain no [lerlual]. enclosure from hemp or for cannabis plants of how THC concentrated.

The Court should compare the elements of the state crime as they exist when Mr. Fusco was convicted of that offense to these of the crime as defined in the federal sentencing - that is after the agricultural improvement act removed hemp from the federal drug schedule because the federal CSA excludes hemp but section Mass Gen. Laws CH 94 C Sections 31, class(b)(1), 32(a). Statute did not, the later crime greater breadth is evident from the text. Because Mr. Fusco's conviction for marijuana is factually overboard and not a categorical match for a "controlled substance offense" and it would be error for the District Court not to correct the application for the sentence enhancement for the controlled substance offense. In fact the marijuana is not a predicate offense for 1962(c) conviction. Mr. Fusco contends that the conviction should be vacated. See *United States v. Abdulaziz*, 998 F.3d 519 (1st Cir. 2021).

The Courts currently have six listed factors that are examined to determine whether to clear and convincing standard applies, (1) whether the enhanced sentence falls within the maximum sentence for the crime alleged - here the enhanced sentence was a life or the statutory maximum of 45 years; (2) whether the enhance sentence negate the presumption of enhance for the crime alleged in the indictment - there the Jury found that the government failed to prove two predicate for conviction under 1962; (3) whether the facts affected in support of the enhancement create new offense required separate punishment here no new facts where offered that the Jury did not consider; (4) whether the increase in sentence is based on the extent of a conspiracy - here Mr. Fusco was not convicted on Count 2, acquitted and or relevant conduct was used requiring the clear and convincing evidence standard; (5) whether, the increase in the number of offense levels (I.E.) less than or equal to four; here the offence level intent from 26 to 45; (6) whether the length of the enhancement sentence was more than double the length of the sentence authorized in the initial sentencing guideline range case where the defendants would otherwise have received relatively, that been sentenced.

The Ninth Circuit has twice held that the preponderance at the evidence standard did not satisfy due process. See *United States V. Mezas De Jesus* 217 F3d 638, 642-64 (9th Cir. 2000); *United States V. Depper*, 177 F.3d 824, 833 (9th Cir 1999). In *Mezas De Jesus* we held that a nine-level increase in offense level for an

uncharged kidnapping has an extremely disproportionate effect on the defendants sentence relative to the offense of which he was convicted and the District Court erred in failing to apply a clear and convincing evidence standard 217 F.3d at 642-44 in Depper we held that a seven-level increase in offense level based on acquitted conduct required application of the clear and convincing standard 177 F.3d at 833.

This same reasoning should be applied to Mr. Fusco actual sentence of 300 months - 25 years - amounts to doubling after the misapplication of the guidelines and almost doubles the offense level of 26 to 45. Mr. Fusco contends that his sentence should be vacated and he be re-sentenced without the enhancements under the preponderance of the evidence standard.

#### G. CONSTITUTIONAL AND STATUTORY PROVISION

##### Fifth Amendment Right To Due Process:

The Defendant was charged with RICO. The conspiracy listed multiple predicate acts. The Defendant was convicted by a jury on the Rico count and two predicate counts of interstate travel, and marijuana. The five-year time period of 18 U.S.C. 3282 had expired on the Marijuana conviction in 2007. The Marijuana act was only a course of a few days, in which the Defendant withdrew in 2002. The grand jury's indictment was not within the give-year time period of 18 U.S.C. 3282, as the United States Supreme Court explained in *Smith v. United States*, 568 U.S. 106 (2013). The Defendant was convicted of RICO in 2003 and was in prison until 2006.

#### H. The Five-Year Limitation Period Of 18 U.S.C. 3282 Had Expired Before The Grand Jury Returned Its Indictment For A 21 U.S.C. 841(a) Violation In Violation Of Due Process

In *Smith v. United States*, 568 U.S. 106 (2013), The United States Supreme Court stated that upon joining a criminal conspiracy, a defendant's membership in the ongoing unlawful scheme continues until he withdraws. A defendant who withdraws outside the relevant statute of limitations period has a complete defense to prosecution. Withdrawal starts the clock running on the time within a defendant may be prosecuted, and provides a complete defense when the withdrawal occurs beyond the applicable statute of limitations period.

The Defendant was convicted of a 21 U.S.C. 846 drug conspiracy, in which the Defendnat allegedly purchased marijuana in 2002. The Defendant provided a \$10-dollar sample of alleged marijuana to the FBI confidential informant, named Leo Danielle, a deal for alleged marijuana was never done (April, 2012 Trial Tr.826:

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2-16). The Defendant was convicted of RICO from 1991 until 2000, in 2003. The Defendant served a 33-month sentence from 2003 until 2006. See *United States v. Fusco*, No. 00-CR-30036-MAP (D. Mass. 2004).

Witness Anthony Arillota testified that in 2006, after the release of Defendant, that the Defendant no longer wanted to send money to New York (that's proof of withdrawal). Title 18 U.S.C. 1962(d) makes it unlawful to conspire to violate the Racketeer Influenced and Corrupt Organization Act, which makes it unlawful, among other things, for any person employed by or associated with any enterprise engaged in or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through the pattern of racketeering activity. The Government position and their theory a trial was to establish Title 18 U.S.C. Section 1952(1)(a)-(3)(a). Defendant did not agree to participation. In fact, the Defendant made it clear he was no longer acting on behalf of that family. (April. 2012, Trial. Tr. Id. at 430:12-431:6.). Thus the Government failed to prove beyond a reasonable doubt a key element of RICO, making Defendant Fusco actually innocent of the offense.

The Section 846 violation ended in 2002 (Oct. 11, 2012, Sent.Tr.88-89)("The district court only held the Defendant responsible, pursuant to U.S.C.G. Section 1B1.3, for relevant conduct ending in 2002".) The Defendant was in prison for the next three-years. The five-year time period of 18 U.S.C. Section 3282 expired in 2007. The grand jury's indictment in this matter was not issued until 2010, three years after the expiration of the five-year time period of section 3282.

On a RICO conspiracy count, the government's burden as to the pattern of racketeering activity requirement is to prove that the Defendant agreed that at least two acts of racketeering would be committed in furtherance of the conspiracy *United States v. Leoner-Aguirre*, 939 F.3d 310 (1st Cir. 2019). The Defendant was found guilty at trial of two-racketeering acts, which were counts 2 and 5. Count two, the 21 U.S.C. Section 846 drug conspiracy, was outside the five-year time period of section 3281. *Smith v. United States*, 568 U.S. 106 (2013).

Without a "second valid predicate acts" the Defendant is actually innocent of the "RICO conviction." Title 18 U.S.C. Section 1962(d) "RICO Conspiracy" has two predicate acts as the elements of that statute. Therefore, with only one valid predicate act the Defendant is "factual innocence" of the "RICO conspiracy." Actual innocence means factual innocence, not mere legal insufficiency. *Boysly v. United States*, 523 U.S. 614 (1998). A Defendant asserting innocence as a gateway must establish that in light of new evidence, it is more likely than not that no reasonable jury would have found the Defendant guilty beyond a reasonable doubt. *House v. Bell*, 547

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U.S. 518 (2006).

The evidence of withdrawal in light of Smith v. United States, 568 U.S. 106 (2013) was never presented to the jury, therefore, it's new evidence, then without two predicate acts, no reasonable jury could convict the Defendant of RICO beyond a reasonable doubt. Therefore, the Defendant is actually innocent of the RICO conviction. Bously.

The Defendant made Counsel aware that his conduct with (Leo Daniele) was not on behalf of the Genovese organized crime Family. The District Court committed error when of the constitutional magnitude when he found Leo Daniele "Unavailable" under Rule 804, in derogation of the accuses fundamental, Sixth Amendment Right of Confrontation. See Crawford v. Washington, 541 U.S.36 (2004).

The last, the District Court held in a Rule 29 proceeding that the Defendnat never had a part in the racketeering acts during his time in federal prison, from 2003 until 2006.(Sept. 17, 2012: Crim Doc. 286.)

Mr. Fusco contends that his Constitutional rights have been violated and as the Court for nothing more than Justice on what the Constitution guarantees him. He requests that this Honorable Court vacate his sentence and re-sentence him without all the errors demonstrated herein.

III. The Section 3553(a) Factors Support Fusco's Release:

When extraordinary and compelling reasons are found the court must "consider [] the [sentencing] factors set forth in Section 3553(a) to the extent they are applicable." 18 U.S.C. 3582(c)(1)(A). Section 3553(a) "contains an overarching provision instructing district courts to 'impose a sentence sufficient, but not greater than necessary,' to accomplish the goals of sentencing." *Kimbrough v. United States*, 552 U.S. 85 (2007)(emphasis added)(quoting 18 U.S.C. 3553). The goals include:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care or correctional treatment in the most effective manner. 18 U.S.C. 3553(a)(2).

The other applicable sentencing factors the court must consider are "the nature and circumstances of the offense and history and characteristics of the defendant" and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* 3553(a)(1)-(6).

Petitioner Fusco has served 144 months out of 255 month sentence( based on Good Credit Time), serving 56% of his sentence. Fusco's projected release date is June of 2031. Fusco argues the sentence he has served over the past 36 months has been harsher and more oppressive, to include: the exposure to a deadly virus; repeated lengthy lockdowns; the denial of basic fundamental rights, i.e., recreation, communication with his family; adequate medical care and most importantly Fusco contracting Covid-19 and suffering permanent damage, as a result of FMC-Devens' deliberate indifference to Fusco's health & safety. Under all the circumstances of this case, the Court should conclude the sentence Petitioner has already served is sufficient to satisfy the purposes of sentencing. Pursuant to *Pepper v. United States*, 562 U.S. 476, 490-93 (2011), "the [c]ourt can, and indeed must consider post-offense developments under 3553(a)", and Fusco argues the sentence this Honorable Court originally imposed is a far cry from what was contemplated and worthy of compassion or a substantial sentence reduction.

Petitioner Fusco does not dispute nor discount the seriousness of his offense, but would point out the sentencing purposes of punishment does not warrant a sentence to include the exposure to, or Fusco contracting,

a life-threatening illness or the resulting harsh conditions (excessive lockdowns et al.,) used to mitigate the spread of Covid-19. In fact the Eighth Amendment's prohibition on "cruel and unusual punishment" includes unreasonable exposure to dangerous conditions while incarcerated. See *Helling v. McKinney*, 509 U.S. 25, 28 (1993)(citing cases condemning the exposure of inmates to contagious diseases); *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir.1996); *Wallis v. Baldwin*, 70 F.3d 1024, 1076 (9th Cir. 1995)(applying *Helling* to exposure to asbestos); *Brown v. Mitchell*, 327 F.Supp. 2d 615 (E.D. Va. July 28, 2004)(applying *Helling* to contagious diseases caused by overcrowded conditions). It can be argued, the service of a sentence in violation of the Eighth Amendment does not, "provide just punishment for the offense" nor "promote respect for the law." In fact the unduly harsh conditions of confinement and Fusco contracting and suffering severe effects from Covid-19 has acted as a strong "deter[rent] to [future] criminal conduct." *Id.* 3553(a)(2)(A) & (B).

Petitioner Fusco's conduct while incarcerated establishes that the purposes of punishment have been met. Under *Pepper*, the Court must also consider "the most up-to-date picture" of Fusco's history and characteristics which "shed light on the likelihood the [Fusco] will engage in future criminal conduct." *Pepper*, 562 U.S. at 492. Petitioner Fusco has incurred minimal infractions in his 144 months of service. Fusco has participated in numerous programs, but most compelling is the Bureau of Prisons "Recidivism Risk Assessment" of Fusco, also known as a "PATTERN Score." The PATTERN Score was developed as a predictor of future criminal conduct and is divided into two-parts, the risk of recidivism and risk of future violence. Fusco scored: "Risk Level Inmate: R-Min, General Level: R-Min. (0), Violent Level R-Min. (5) (See EXHIBIT - E, PATTERN Score & Progress Report). The Government, by and through their own experts (the BOP), have established Fusco is a minimal risk for recidivism and not a danger to anyone in the community. This is a key concession when weighing the 3142(g) factors or when assessing his danger to the community and another reason this Court should release Fusco. In support of Fusco's Motion For Compassionate Release, find attached as EXHIBIT - F, Letters/Affidavits In Support of Fusco's Character and Rehabilitative efforts.

Or:

Should the Court find extraordinary and compelling reasons but is not persuaded the purpose and goals of sentencing have not been satisfied/fulfilled, Fusco argues this Honorable Court should, to "avoid unwarranted sentencing disparities" GRANT a partial reduction in his sentence. Petitioner submits courts reviewing motions for sentence modifications, e.g., partial reduction in sentences have additionally considered the extent to which onerous lockdowns and restrictions imposed by correctional facilities attempting to control the spread of Covid-19

have made sentences "harsher and more punitive that would otherwise have been the case." United States v. Rodriguez, 2020 U.S. Dist. LEXIS 181004, at \*7 (S.D.N.Y. Sept. 30, 2020); See also United States v. Ciprian, 2021 U.S. Dist. LEXIS 18698, at \*8 (S.D.N.Y. Feb. 1, 2021)("A day spent in prison under extreme lockdown and fear of contracting a deadly virus exacts a price on a prisoner beyond that imposed by an ordinary day in prison. While not intended as punishment, incarceration in such conditions is , unavoidably, more punishing."); United States v. Ng Lap Seng, 2021 U.S. Dist. LEXIS 48187 (S.D.N.Y. Mar. 15, 2021)(granting compassionate release after considering inter alia, harsh conditions of confinement during the pandemic, fact that Petitioner had served a significant portion of his sentence, health threats posed by COVID-19). Indeed sentencing Court's now regularly deviate from the Guidelines in light of the future hardships defendants will face due to harsher conditions in light due to Covid-19. (See EXHIBIT - G, Article N.Y. Post.). As noted in the article, Judge Paul Oetken [S.D.N.Y.] went so far as to come up with a formula for how much credit inmates should receive towards a sentence if they were behind bars during the pandemic. "I do believe that because it's been harsher than a usual period that it's more punitive, that it is essentially the equivalent of either time and a half or two times what would ordinarily be served." Id. To avoid any "unwarranted sentencing disparities," Petitioner Fusco ask this Court to reduce his sentence 18-36 months (based on a conservative 36 month estimate of sentence thus served and future harsh conditions), due to Fusco's sentence being harsher than this Court originally contemplated.

#### IV. Other Sentences Available To The Court:

Petitioner Fusco has submitted three potential sentencing options for this Court to consider: (1) Compassionate Release, reducing Fusco's sentence to time served; (2) a partial reduction in Fusco's sentence of between 18-to-36 months, for enduring a sentence that was harsher then contemplated; or GRANT Fusco Compassionate Release and convert the remainder of his sentence to an additional term of supervised release. All are acceptable, and have been granted by the Second Circuit. Should the Court be leaning towards compassionate release but still has concerns regarding the 3142(g) factors, Fusco submits to additional conditions of supervised release, including but not limited to:

1. Curfews, with the exception of work, programming, medical visits or religious services; and
2. Ankle bracelet monitoring for 6-months or until Fusco can demonstrate good conduct while serving his time on supervised release;
3. Regular contact with probation services, e.g. check-in every two-weeks, and additional visits to Fusco's residence by Probation Services;
4. Any other terms this Court deems sufficient to ensure the publics safety.

CONCLUSION

WHEREFORE, a showing of "extraordinary and compelling reasons", a satisfactory showing the 3553(a) factors, and a showing Fusco does not present a danger to anyone in his community, pursuant to 3142(g). Fusco respectfully requests the following relief:

- (1) This Honorable Court GRANT Fusco's Compassionate Release Motion, reducing his sentence to time served; or
- (2) This Honorable Court reduce Fusco's sentence between 18-to-36 months, for serving his sentence under harsh conditions of confinement; or
- (3) This Honorable Court GRANT Fusco's Motion for Compassionate Release, and convert the remainder of his sentence to an additional term of supervised release; or
- (4) Any other relief this Honorable Court deems equitable.

I, Emilio Fusco do hereby declare under the penalty of perjury, pursuant to 28 U.S.C. 1746, the foregoing facts represented in this instant motion are true and correct, to the best of Fusco's knowledge and understanding.

Dated: 5/2/, 2022.

Respectfully submitted,

Emilio Fusco  
Emilio Fusco, pro se  
Federal Medical Center Devens  
P.O. Box 879  
Ayer, Massachusetts 01432

CERTIFICATE OF SERVICE

I, Emilio Fusco do hereby declare under the penalty of perjury, pursuant to 28 U.S.C. 1746, that on 5/2, 2022, I placed in the prison mailbox a true and correct copy of the foregoing attached motion for compassionate release, First Class Postage affixed, addressed to the following:

Dated: 5/2/, 2022.

Emilio Fusco  
Emilio Fusco, #02689-748  
FMC-Devens  
P.O. Box 879  
Ayer, MA 01432



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# EXHIBIT

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A

**FUSCO, Emilio**  
**Reg. No. 02689-748**  
**P-3 Unit**

This is in response to your request for Compassionate Release/Reduction in Sentence (RIS) consideration, received on February 10, 2021, wherein you are requesting to be considered for RIS based on medical circumstances and concerns about the Coronavirus disease 2019 (COVID-19).

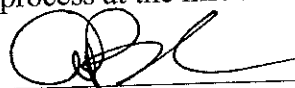
Title 18 of the United States Code, section 3582(c)(1)(A), allows a sentencing court, on motion of the Director of the Bureau of Prisons (BOP), to reduce a term of imprisonment for extraordinary or compelling reasons. BOP Program Statement No. 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), provides guidance on the types of circumstances that present extraordinary or compelling reasons, such as the inmate's terminal medical condition; debilitated medical condition; status as a "new law" elderly inmate, an elderly inmate with medical conditions, or an "other elderly inmate"; the death or incapacitation of the family member caregiver of the inmate's child; or the incapacitation of the inmate's spouse or registered partner.

A review of your medical record indicates that your circumstances are not extraordinary or compelling. It has been determined that you do not have a terminal or deteriorating medical condition that would diminish your ability to function within a correctional setting. You have a medical history of inguinal hernia repair, cardiac ablation, internal hemorrhoids, colon polyps, anemia, and COVID-19 (recovered). You are completely independent with your activities of daily living and FMC Devens is able to manage your medical needs at this time.

With regards to medical care provided at FMC Devens, medical staff continue to actively monitor and treat your medical conditions. Should you have questions or concerns regarding your medical care, you are encouraged to discuss your concerns with medical staff through normal sick call procedures. You are receiving, and will continue to receive, appropriate medical care consistent with Bureau of Prisons' medical standards.

The Bureau of Prisons is taking extraordinary measures to contain the spread of COVID-19 and treat any affected inmates. We recognize that you, like all of us, have legitimate concerns and fears about the spread and effects of the virus. However, your concern about being potentially re-exposed to COVID-19 does not currently warrant an early release from your sentence.

Based on the recommendations and information provided, you are not appropriate for RIS at this time. If you do not agree with this decision, you may appeal using the Administrative Remedy process at the institution level within twenty (20) calendar days of the receipt of this letter.



A. Boncher, Warden

03/11/2021  
Date

**FMC DEVEN-S**  
**COMPASSIONATE RELEASE NOTIFICATION FORM**

FUSCO, Emilio  
Reg. No. 02689-748

On this date, the above individual was informed (verbally and/or in writing) that his request for Compassionate Release (Program Statement 5050.50) was denied.

The above individual was explained the reasons for denial, how to appeal the decision (if applicable), how to reapply for Compassionate Release (if applicable), and understands the processing and current status of his Compassionate Release request, as well as any other pertinent information.



Name



Date



Staff person

S. Ogilvie, LCSW, BCD  
Clinical Social Worker  
FMC Devens

  
S. Ogilvie

**NOTIFICATION TO THE INMATE POPULATION**

DATE: January 7, 2022

From: WARDEN'S OFFICE, FMC DEVENS

SUBJECT: COVID-19 UPDATE

- As of today, FMC Devens has 38 inmates who are COVID-19 positive and in isolation.
- Our facility vaccination rate including both staff and inmates that are fully vaccinated is 87%. If you have not received your COVID-19 vaccine and would like to, please notify a staff member in health services. If you are eligible for the Booster and haven't taken it yet, you may notify a staff member from health services that you would like to accept it.
- Many institutions have suffered repeated "outbreaks" of the virus with this new, highly-contagious Omicron variant, so it is imperative that you continue to
  - o Practice social distancing of 6-feet apart whenever possible
  - o Wear face coverings *properly* (over nose and mouth) at all times
  - o Do not eat or drink in common areas
  - o Disinfect surfaces such as phones and computers regularly. Wash your hands regularly.
- Social visitations will be suspended at this time, however this status will be reviewed regularly to determine when it can begin again.
- As the numbers of positive cases has increased, the movement schedule must be adjusted in order to ensure the safety of all inmates and staff.
- Sick call will occur face to face in the housing units by a provider Monday-Friday. Should anyone develop symptoms of illness on the weekend, please notify your housing unit officer without delay in order to prevent any potential spread of illness.
- If soap or cleaning supplies are unavailable notify the unit officer immediately.

## NOTIFICATION TO THE INMATE POPULATION

DATE: January 20, 2022

From: WARDEN'S OFFICE, FMC DEVENS

SUBJECT: COVID-19 UPDATE

- As of today, FMC Devens has 11 inmates who are currently COVID-positive and in isolation.
- The Omicron strain of COVID-19 has shown to be highly contagious. The community transmission rate in this area is around 1900 per 100k currently, which is similar to most parts of the country. The wearing of masks and social distancing, especially inside, is one of the best defenses against contracting the virus.
- The vaccine remains the best defense against severe illness from the virus. You are strongly encouraged to get vaccinated. The vaccine does not protect you from infection, but mitigates the impact of the virus (e.g., less severe symptoms).
- In order to prevent the spread of this virus:
  - Please wear your mask over your both your mouth and nose, especially when inside.
  - If you share a bunk, you should be sleeping head to toe to increase the distance between your heads.
  - Wash your hands with soap and water for at least 20 seconds, often.
  - Do not eat or drink in common areas.
  - Disinfect surfaces such as phones and keyboards between each use.
- Please remember the symptoms of Covid-19 include New-Onset Cough, New-Onset trouble speaking, loss of taste/smell, muscle/body aches, fatigue, sore throat, and headache. Please report symptoms to prevent another outbreak.

We thank you for your continued support during this ongoing national crisis.

FUSCO, EMILIO 02689748



## **NOTIFICATION TO THE INMATE POPULATION**

**DATE:** February 8, 2022  
**From:** WARDEN, FMC DEVENS  
**SUBJECT:** COVID-19 UPDATES

As of today, FMC Devens has 19 inmates who are currently COVID-positive and in isolation.

The community transmission rate in this area is around 500 per 100k currently, which is a significant decrease over past few weeks. We remain in RED operations at this time. The wearing of masks and social distancing, especially inside, continues to be one of the best defenses against contracting the virus.

The Bureau of Prisons has updated the COVID-19 Pandemic Response Plan. The following changes will be made as a result of the CDC's updated guidance for correctional environments. Additionally, we are preparing to resume social visiting and will provide notification of the date when determined.

### **Quarantine:**

- All inmate quarantine durations have been reduced from 14 to 10 days.
- All inmates, regardless of vaccination status, will complete a 10-day quarantine if exposed.
- Inmates who are not fully vaccinated will continue to complete a 10-day quarantine at intake, prior to transfer or release.

### **Isolation:**

- The medical isolation duration remains 10 days from the date symptoms first appear, or if asymptomatic, the date of a positive test.

### **Testing:**

- Inmates are to be tested out of quarantine using either a PCR (lab) or POC (Point of Care) test.
- Testing for release from medical isolation is not recommended.

### **Temperature Checks:**

- Daily temperature checks are no longer required for inmates in Exposure quarantine status, but daily symptom checks will continue.

- All inmates in medical isolation will be assessed AT LEAST DAILY, for temperature and symptoms of illness and decompensation, including asking about shortness of breath and cough.

**Masks:**

- Staff and inmates are still required to wear masks indoors and outdoors when in RED operations.

Please remember the symptoms of Covid-19 include New-Onset Cough, New-Onset trouble speaking, loss of taste/smell, muscle/body aches, fatigue, sore throat, and headache. Please report symptoms to prevent another outbreak.

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# EXHIBIT

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B

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# EXHIBIT

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C

Jul/9/2021 11:34:26 AM

Nashoba Valley Medical Center 978-784-9550

3/10

00089-748

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**Patient Name: Fusco, Emilio**  
**Patient ID: IE00001563 (SMG)**

Date of Birth: 09-Oct-1968  
Age: 52 years  
Gender: male  
Accession Number: CT21070205881E  
Location: SMG - Fort Devens  
Referring Physician: Megan Shaw

Study Date: 02-Jul-2021 10:52  
Procedure Types: CT chest wo/w con

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**Verified**

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**CT CT chest wo/w con**

Result Status Description: Final

SMG Imaging  
at FMC Devens  
Steward Health Care  
42 Patton Road  
Ayer, MA 01432  
(978) 796-1486

Patient Name: Fusco, Emilio  
Address: 333 South St  
City/State/Zip: Shrewsbury, MA 01545  
Phone: (508) 793-1202  
DOB/Age/Sex: 10/09/1968/52/M

Medical Record#: IE00001563  
Account#: SQ0000018978  
Attending Dr: Megan Shaw MD  
Insurance: Self Pay

Admit/Reg Date: 07/02/21  
Location: SMGDEVENS/

Ordering Dr: Megan Shaw, MD  
PCP: Shaw, Megan MD  
Date of Service: 07/02/21

Order (s): CT chest wo/w con



Jul/9/2021 11:34:26 AM

Nashoba Valley Medical Center 978-784-9550

4/10

Patient: Emilio Fusco ID: IE00001563 (SMG) Study Date: 02-Jul-2021 10:52

CPT Code: 71270

Report Number: IMG0708-0628

Reason for Exam: POST COVID DYSPLASIA W/PERSISTENT INFILTRATES

Patient name: Emilio Fusco

Exam: CT chest w/w.con

Technique: A noncontrast chest CT was performed according to our usual protocol with multiplanar reconstructions. All CT scans at this facility use at least one of these dose optimization techniques; automated exposure control, MA and or KV adjustment per patient size (includes targeted exams where dose is matched to clinical indication), or iterative reconstruction.

Procedure date and time: 7/2/2021 12:00 AM

Indication: POST COVID DYSPLASIA W/PERSISTENT INFILTRATES

Comparison: None

Findings: There are some groundglass densities notably in the lower lobes there is also some patchy groundglass in both upper lobes with relative sparing of the right middle lobe.

There is some more advanced fibrotic change in the lower lobes with mild bronchiectasis.

There is no lobar pneumonia or gross heart failure. No dominant mass or adenopathy is seen. The heart size is normal.

Images of the upper abdomen show a liver which has Hounsfield units averaging about 52 which is borderline for fatty infiltration. No liver mass is seen and no other masses or aggressive lesions are seen on the images through the upper abdomen.

Bone window images show multiple Schmorl's nodes in the thoracic spine and some kyphotic change but no definite acute or aggressive bone lesion.

Impression: GROUNDGLASS OPACITIES AND SOME MORE ADVANCED FIBROTIC CHANGES INCLUDING MILD BRONCHIECTASIS MOST EVIDENT AT BOTH LUNG BASES. GROUNDGLASS DENSITIES ARE ALSO PRESENT AT THE APICES. THIS MAY ALL REPRESENT THE SEQUELAE OF PREVIOUS INFECTION. ONGOING INFECTIOUS OR INFLAMMATORY INFILTRATE IS NOT EXCLUDED.

NO LOBAR PNEUMONIA OR GROSS HEART FAILURE. NO MASS OR ADENOPATHY.

Dictated By: Michael Dowe, MD 07/08/21 1039

Signed By: Dowe, Michael MD 07/08/21 1053

TD/TT: 07/08/21 1039 Tech: SVC RPACS

cc: SHAME04\*

Megan Shaw, MD

Michael Dowe  
08-Jul-2021 10:59

Page 1

*Overnight Oximetry*

Fusco, Emilio (Male)		Start Date / Time: 06/29/2021 17:53:09	
Medical Record ID: 02689-748	Date of Birth: 10/09/1988	Total Recording Time: 06:48:54	
Patient ID: 02689-748	Visit: 07/02/2021 09:34	Excluded Data Time: 00:00:06	
Signature:		Analysis Time: 06:48:48	

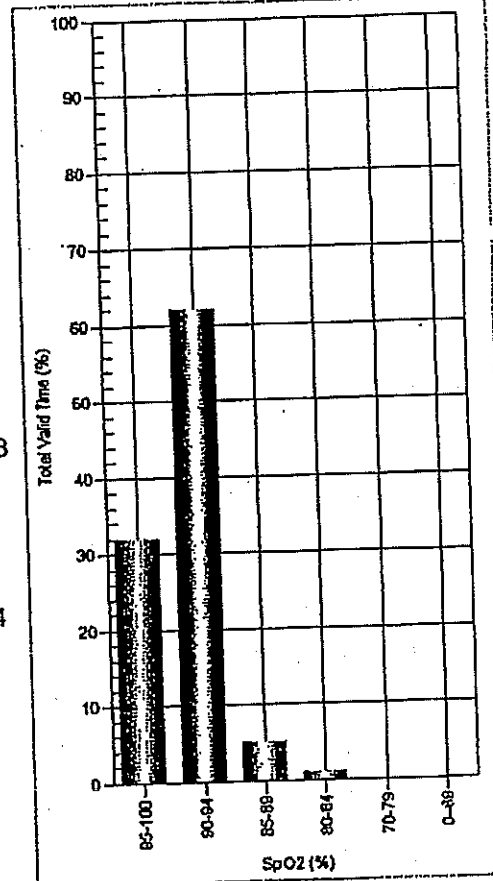
**SpO2 and Pulse Analysis**

	%SpO2	Pulse (BPM)	Time
Baseline	95	76	
Mean	93	64	
Min %SpO2	76	73	06/29/2021 22:27:11
Max %SpO2	98	63	06/29/2021 22:05:13
Min Pulse		50	
Max Pulse		143	

% SpO2	Duration	%Duration
T90[<90%]	00:25:32	6
T89[<89%]	00:18:54	4
T88[<88%]	00:14:04	3
T87[<87%]	00:11:24	2
T86[<86%]	00:08:08	1
T85[<85%]	00:06:10	1

Bradycardia Events 5308

Tachycardia Events 359

Total duration 88%  
SpO2 and below: 00:18:54**Desaturation Analysis**

Mean Duration: 00:00:42

Longest Duration: 00:02:24

Number of occurrence(s) with %SPO2 &lt;= 88, longer than or equal to 2 minutes: 0

Duration of the longest occurrence with %SpO2 &lt;= 88: 00:00:42

Start time for this occurrence: 06/29/2021 23:05:17

*Please see adm. note for full reading**Wibson (I. Ketsler, MD)*  
*7/13/2021*Dr. I. Ketsler, M.D.  
Contract Pulmonologist  
FMC Devens

Fusco, Emilio ( Male )		Start Date / Time: 06/29/2021 17:53:09	
Medical Record ID: 02689-748	Date of Birth: 10/09/1968	Total Recording Time: 06:48:54	
Patient ID: 02689-748	Visit: 07/02/2021 09:34	Excluded Data Time: 00:00:06	
Signature:		Analysis Time: 06:48:48	

Total Number of Events: 116 (First 50 deepest events displayed)

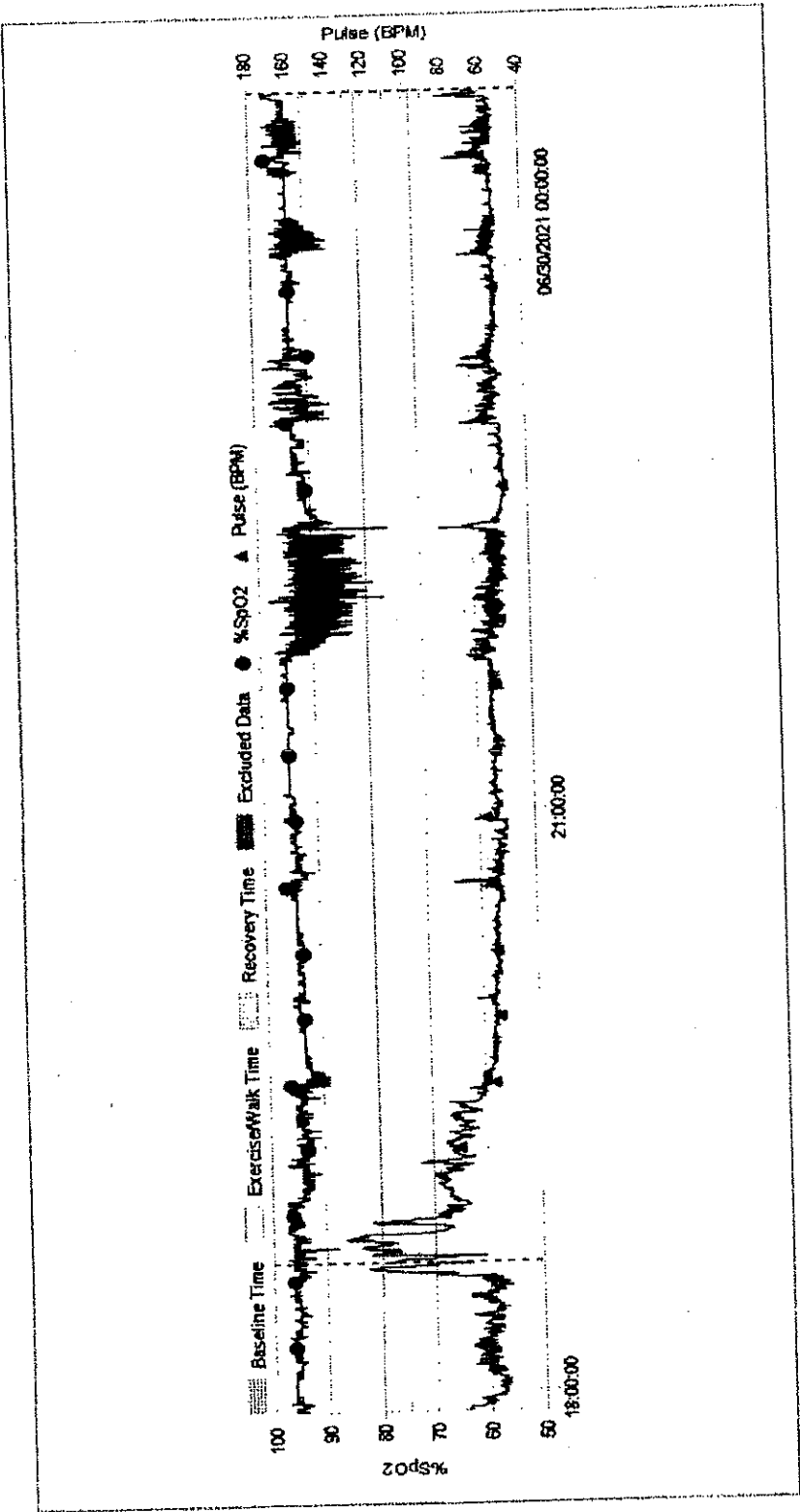
Event	Start Date / Time	Stop Date / Time	Duration	Min. %SpO2	Avg. BPM	Max. BPM	Min. BPM
68	06/29/2021 22:26:45	06/29/2021 22:27:29	00:00:44	76.00	71.00	79.00	67.00
38	06/29/2021 22:05:19	06/29/2021 22:06:19	00:01:00	77.00	60.00	67.00	56.00
44	06/29/2021 22:10:09	06/29/2021 22:10:47	00:00:38	79.00	56.00	63.00	51.00
41	06/29/2021 22:07:43	06/29/2021 22:08:25	00:00:42	80.00	61.00	68.00	55.00
47	06/29/2021 22:12:11	06/29/2021 22:12:51	00:00:40	81.00	56.00	61.00	53.00
53	06/29/2021 22:16:15	06/29/2021 22:16:51	00:00:36	81.00	56.00	61.00	50.00
65	06/29/2021 22:24:19	06/29/2021 22:24:57	00:00:38	82.00	56.00	62.00	52.00
48	06/29/2021 22:12:55	06/29/2021 22:13:29	00:00:34	82.00	57.00	61.00	53.00
46	06/29/2021 22:11:29	06/29/2021 22:12:05	00:00:36	82.00	57.00	61.00	53.00
39	06/29/2021 22:06:21	06/29/2021 22:06:59	00:00:38	82.00	58.00	63.00	54.00
36	06/29/2021 22:03:43	06/29/2021 22:04:29	00:00:46	82.00	59.00	66.00	54.00
40	06/29/2021 22:07:03	06/29/2021 22:07:39	00:00:36	82.00	60.00	63.00	55.00
54	06/29/2021 22:16:57	06/29/2021 22:17:37	00:00:40	82.00	56.00	61.00	52.00
34	06/29/2021 22:02:19	06/29/2021 22:03:05	00:00:46	83.00	58.00	65.00	54.00
35	06/29/2021 22:03:05	06/29/2021 22:03:43	00:00:38	83.00	57.00	62.00	54.00
32	06/29/2021 22:00:49	06/29/2021 22:01:31	00:00:42	83.00	58.00	63.00	54.00
28	06/29/2021 21:58:19	06/29/2021 21:58:51	00:00:32	83.00	58.00	61.00	55.00
22	06/29/2021 21:54:27	06/29/2021 21:55:07	00:00:40	83.00	67.00	70.00	60.00
45	06/29/2021 22:10:51	06/29/2021 22:11:29	00:00:38	83.00	56.00	61.00	52.00
33	06/29/2021 22:01:35	06/29/2021 22:02:19	00:00:44	83.00	58.00	64.00	53.00
31	06/29/2021 22:00:09	06/29/2021 22:00:47	00:00:38	83.00	59.00	63.00	55.00
26	06/29/2021 21:57:01	06/29/2021 21:57:41	00:00:40	83.00	59.00	65.00	54.00
50	06/29/2021 22:14:15	06/29/2021 22:14:49	00:00:34	83.00	55.00	59.00	52.00
52	06/29/2021 22:15:29	06/29/2021 22:16:09	00:00:40	83.00	56.00	60.00	53.00
55	06/29/2021 22:17:37	06/29/2021 22:18:15	00:00:38	83.00	57.00	60.00	53.00
37	06/29/2021 22:04:29	06/29/2021 22:05:13	00:00:44	84.00	65.00	69.00	56.00
25	06/29/2021 21:56:23	06/29/2021 21:56:57	00:00:34	84.00	60.00	65.00	56.00
62	06/29/2021 22:22:11	06/29/2021 22:22:51	00:00:40	84.00	56.00	60.00	53.00
60	06/29/2021 22:20:51	06/29/2021 22:21:31	00:00:40	84.00	56.00	62.00	52.00
49	06/29/2021 22:13:33	06/29/2021 22:14:07	00:00:34	84.00	58.00	60.00	55.00
66	06/29/2021 22:24:59	06/29/2021 22:25:45	00:00:46	84.00	61.00	66.00	55.00
43	06/29/2021 22:09:19	06/29/2021 22:10:09	00:00:50	84.00	58.00	65.00	53.00

Fusco, Emilio (Male)				Start Date / Time: 06/29/2021 17:53:09			
Medical Record ID: 02689-748		Date of Birth: 10/09/1968		Total Recording Time: 06:48:54			
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Signature:				Analysis Time: 06:48:48			

Event	Start Date / Time	Stop Date / Time	Duration	Min. %SpO2	Avg. BPM	Max. BPM	Min. BPM
63	06/29/2021 22:22:55	06/29/2021 22:23:33	00:00:38	84.00	57.00	62.00	51.00
59	06/29/2021 22:20:11	06/29/2021 22:20:47	00:00:36	84.00	57.00	63.00	51.00
42	06/29/2021 22:08:27	06/29/2021 22:09:19	00:00:52	84.00	57.00	60.00	55.00
58	06/29/2021 22:19:33	06/29/2021 22:20:05	00:00:32	84.00	58.00	62.00	53.00
30	06/29/2021 21:59:33	06/29/2021 22:00:05	00:00:32	85.00	59.00	62.00	56.00
51	06/29/2021 22:14:53	06/29/2021 22:15:25	00:00:32	85.00	55.00	58.00	52.00
61	06/29/2021 22:21:33	06/29/2021 22:22:11	00:00:38	85.00	56.00	60.00	52.00
64	06/29/2021 22:23:35	06/29/2021 22:24:15	00:00:40	85.00	56.00	61.00	51.00
27	06/29/2021 21:57:41	06/29/2021 21:58:15	00:00:34	85.00	58.00	61.00	55.00
70	06/29/2021 22:28:55	06/29/2021 22:29:23	00:00:28	86.00	58.00	59.00	55.00
29	06/29/2021 21:58:55	06/29/2021 21:59:29	00:00:34	86.00	58.00	63.00	54.00
74	06/29/2021 23:00:41	06/29/2021 23:01:11	00:00:30	86.00	61.00	64.00	58.00
78	06/29/2021 23:05:03	06/29/2021 23:06:15	00:01:12	86.00	58.00	62.00	56.00
89	06/29/2021 23:53:31	06/29/2021 23:54:01	00:00:30	86.00	59.00	60.00	56.00
93	06/29/2021 23:56:07	06/29/2021 23:56:41	00:00:34	86.00	58.00	62.00	54.00
24	06/29/2021 21:55:51	06/29/2021 21:56:19	00:00:28	87.00	58.00	61.00	56.00
21	06/29/2021 21:53:35	06/29/2021 21:54:27	00:00:52	87.00	61.00	66.00	58.00
57	06/29/2021 22:19:01	06/29/2021 22:19:29	00:00:28	87.00	55.00	57.00	54.00

Fusco , Emilio ( Male )				Start Date / Time: 06/29/2021 17:53:09	
Medical Record ID: 02689-748		Date of Birth: 10/09/1968		Total Recording Time: 06:48:54	
Patient ID: 02689-748		Visit: 07/02/2021 09:34		Excluded Data Time: 00:00:06	
Signature:				Analysis Time: 06:48:48	





**Bureau of Prisons  
Health Services  
Cosign/Review**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968			Race:	WHITE
Scanned Date:	07/13/2021 14:31 EST			Facility:	DEV

**Cosigned by Churchville, Lawrence MD on 07/14/2021 07:40.**

**Bureau of Prisons  
Health Services  
Clinical Encounter**

Inmate Name: FUSCO, EMILIO  
Date of Birth: 10/09/1968  
Encounter Date: 07/22/2021 10:23

Sex: M Race: WHITE  
Provider: Riley, E. NP-C

Reg #: 02689-748  
Facility: DEV  
Unit: P03

Mid Level Provider - Follow up Visit encounter performed at Health Services.

**SUBJECTIVE:**

COMPLAINT 1 Provider: Riley, E. NP-C

Chief Complaint: GENERAL

Subjective: 52 year old past medical history of WPW (Wolff-Parkinson-White) , s/p ablation in 2008, s/p right inguinal hernia repair, anemia, OSA and COVID-19 on 12/21/20.(currently on oxygen since diagnosis of Covid) , Colon polyp 5/9/2017

Patient evaluated today for follow-up for questioning regarding his recent overnight pulse oximetry dated 6/29/2021. There was some question by the pulmonologist note dated 7/13/21 questioning if the patient was wearing oxygen or CPAP during the study. Patient states during the time of this study he was instructed to not wear his sleep apnea machine or oxygen so he did not. Per pulmonologist there were several periods of oxygen desaturations noted.

reviewed his chest CT results from 7/2/2021.

Impression: Groundglass opacities and some more advanced fibrotic changes including mild bronchiectasis most evident in both lung bases. Ground glass densities are also present at the apices. This may all represent the sequela of previous infection, ongoing infectious or inflammatory infiltrate is not excluded. No lobar pneumonia or gross heart failure. No mass or adenopathy

Patient continues to use his oxygen as needed especially when ambulating long distances and his CPAP machine for overnight use. He also describes needing/using oxygen if he is ambulating and speaking to somebody at the same time. He does not feel that his breathing is back to baseline prior to Covid infection. He continues to struggle with exercise and weather changes. He uses his albuterol inhaler roughly 2 times a day on most days.

We discussed that he will have follow-up with the in-house pulmonologist. Patient states "he does not wish to see the in-house pulmonologist anymore due to language barrier and inconsistencies to her reports that her written in his medical chart."

He currently takes famotidine twice daily for his acid reflux. He is inquiring if there is something different he may take for his symptoms. He feels this medication helps but not 100%.

Pain: No

**ROS:**

**General**

**Constitutional Symptoms**

No: Chills, Fatigue, Fever, Weakness

**Cardiovascular**

**General**

Yes: Within Normal Limits

**Pulmonary**

**Respiratory System**

Yes: Dyspnea, Shortness of breath (Triggers?: exercise, ambulating long distances)

No: Within Normal Limits

Inmate Name: FUSCO, EMILIO	Sex: M Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: Riley, E. NP-C	Facility: DEV
Encounter Date: 07/22/2021 10:23		Unit: P03

**GI****General**

Yes: Heartburn

No: Constipation, Diarrhea, Nausea, Vomiting

**OBJECTIVE:****Temperature:**

<u>Date</u>	<u>Time</u>	<u>Fahrenheit</u>	<u>Celsius</u>	<u>Location</u>	<u>Provider</u>
07/22/2021	09:22 DEV	98.2	36.8		Cahill, Alicia RN

**Pulse:**

<u>Date</u>	<u>Time</u>	<u>Rate Per Minute</u>	<u>Location</u>	<u>Rhythm</u>	<u>Provider</u>
07/22/2021	09:22 DEV	66			Cahill, Alicia RN

**Respirations:**

<u>Date</u>	<u>Time</u>	<u>Rate Per Minute</u>	<u>Provider</u>
07/22/2021	09:22 DEV	18	Cahill, Alicia RN

**Blood Pressure:**

<u>Date</u>	<u>Time</u>	<u>Value</u>	<u>Location</u>	<u>Position</u>	<u>Cuff Size</u>	<u>Provider</u>
07/22/2021	09:22 DEV	128/83				Cahill, Alicia RN

**SaO2:**

<u>Date</u>	<u>Time</u>	<u>Value(%)</u>	<u>Air</u>	<u>Provider</u>
07/22/2021	09:22 DEV	100	Room Air	Cahill, Alicia RN

**Exam:****General****Affect**

Yes: Pleasant, Cooperative

**Appearance**

Yes: Appears Well, Alert and Oriented x 3

No: Appears in Pain, Writhing in Pain

**ASSESSMENT:**

Gastro-esophageal reflux disease with esophagitis, without bleeding, K2100 - Current

**PLAN:****Medication Reconciliation.**

The patient's known medication list including OTC items was compiled and compared to new and changed BOP orders.

**New Medication Orders:**

<u>Rx#</u>	<u>Medication</u>	<u>Order Date</u>
	Omeprazole Capsule	07/22/2021 10:23
	<b>Prescriber Order:</b> 20mg Orally Mouth - daily x 180 day(s)	
	Indication: Gastro-esophageal reflux disease with esophagitis, without bleeding	

**Renew Medication Orders:**

<u>Rx#</u>	<u>Medication</u>	<u>Order Date</u>
551617-DEV	Albuterol Inhaler HFA (8.5 GM) 90 MCG/ACT	07/22/2021 10:23
	<b>Prescriber Order:</b> Inhale 2 puffs by mouth every four hours AS NEEDED for shortness of	

Inmate Name: FUSCO, EMILIO	Sex: M Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: Riley, E. NP-C	Facility: DEV
Encounter Date: 07/22/2021 10:23		Unit: P03

**Renew Medication Orders:**

<u>Rx#</u>	<u>Medication</u>	<u>Order Date</u>
	breath or wheezing PRN x 180 day(s)	
	Indication: Confirmed case COVID-19	07/22/2021 10:23
551618-DEV	Calcium Polycarbophil 625 MG Tab	
	<b><u>Prescriber Order:</u></b> Take one tablet (625 MG) by mouth twice daily for constipation while on iron- Take with a glassful of water x 180 day(s)	
	Indication: Anemia, unspecified, Unspecified hemorrhoids	07/22/2021 10:23
551619-DEV	Docusate Sodium 100 MG Cap	
	<b><u>Prescriber Order:</u></b> Take one tablet (100 MG) by mouth twice daily AS NEEDED for constipation - Take with a glassful of water PRN x 180 day(s)	
	Indication: Anemia, unspecified	07/22/2021 10:23
551621-DEV	Ferrous Gluconate 324 (5 GR) MG Tab	
	<b><u>Prescriber Order:</u></b> Take one tablet by mouth three times a week on Monday, Wednesday, and Friday on empty stomach x 180 day(s)	
	Indication: Anemia, unspecified	07/22/2021 10:23
551622-DEV	Mometasone Furoate Inhal 220 MCG/Inh [ 60 doses]	
	<b><u>Prescriber Order:</u></b> Activate inhaler and Inhale one puff by mouth twice daily - **rinse mouth after use** x 180 day(s)	
	Indication: Unspecified abnormalities of breathing	

**Discontinued Medication Orders:**

<u>Rx#</u>	<u>Medication</u>	<u>Order Date</u>
552452-DEV	Famotidine 20 MG Tab	07/22/2021 10:23
	<b><u>Prescriber Order:</u></b> Take one tablet (20 MG) by mouth twice daily	
	Discontinue Type: When Pharmacy Processes	
	Discontinue Reason: new order written	
	Indication:	

**Reconciled Medications:**

<u>Source</u>	<u>Action</u>	<u>Type</u>	<u>Rx#</u>	<u>Medication</u>	<u>Order Detail</u>
BOP	Continue	Rx	551617-DEV	Albuterol Inhaler HFA (8.5 GM) 90 MCG/ACT	Inhale 2 puffs by mouth every four hours AS NEEDED for shortness of breath or wheezing
BOP	Continue	Rx	551618-DEV	Calcium Polycarbophil 625 MG Tab	Take one tablet (625 MG) by mouth twice daily for constipation while on iron- Take with a glassful of water
BOP	Continue	Rx	551619-DEV	Docusate Sodium 100 MG Cap	Take one tablet (100 MG) by mouth twice daily AS NEEDED for constipation - Take with a glassful of water
BOP	Continue	Rx	551621-DEV	Ferrous Gluconate 324 (5 GR) MG Tab	Take one tablet by mouth three times a week on Monday, Wednesday, and Friday on empty stomach
BOP	Continue	Rx	551622-DEV	Mometasone Furoate Inhal 220 MCG/Inh [ 60 doses]	Activate inhaler and Inhale one puff by mouth twice daily - **rinse mouth after use**

Inmate Name: FUSCO, EMILIO	Sex: M Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: Riley, E. NP-C	Facility: DEV
Encounter Date: 07/22/2021 10:23		Unit: P03

<u>Source</u>	<u>Action</u>	<u>Type</u>	<u>Rx#</u>	<u>Medication</u>	<u>Order Detail</u>
		OTC		No known OTCs	

**Disposition:**

Follow-up at Chronic Care Clinic as Needed

**Other:**

GERD: Changed famotidine to omeprazole 20 mg daily. Follow-up as needed.

Dyspnea: Patient continues to use oxygen as needed especially with ambulating long distances and communicating for long periods of time. He is using his rescue inhaler twice daily. Recommended to start using mometasone inhaler again. He states that he was told to stop using this inhaler at some point. Follow-up as needed CT scan results reviewed with patient.

**Patient Education Topics:**

<u>Date Initiated</u>	<u>Format</u>	<u>Handout/Topic</u>	<u>Provider</u>	<u>Outcome</u>
07/22/2021	Counseling	Plan of Care	Riley, E.	Verbalizes Understanding

**Copay Required:** No**Cosign Required:** Yes**Telephone/Verbal Order:** No

Completed by Riley, E. NP-C on 07/22/2021 10:43

Requested to be cosigned by Churchville, Lawrence MD.

Cosign documentation will be displayed on the following page.



DEV 1330.13B  
April 20, 2001  
Attachment A

INFORMAL RESOLUTION INSTRUCTIONS: STAFF MUST COMPLETE AND ATTACH THE ORIGINAL OF THIS FORM TO EACH BP-9 WHEN THE COMPLAINT CANNOT BE INFORMALLY RESOLVED. THE BP-9 WILL NOT BE ACCEPTED WITHOUT THIS COMPLETED FORM, EXCEPT THOSE APPEALING UDC ACTIONS. INFORMAL RESOLUTION FORMS WILL NEVER BE GIVEN TO THE INMATE TO COMPLETE.

NAME: FUSCO, Emilio REG.NO. 02689-748 UNIT: PC

DATE BP-9 REQUESTED: \_\_\_\_\_

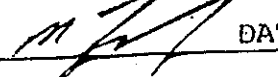
DATE BP-9 ISSUED : \_\_\_\_\_

DATE BP-9 RETURNED : \_\_\_\_\_


INMATE'S COMPLAINT: Medical records refused to give me a copy of the denial for outside pulmonary consult requested by PA Riley. Medical records told me that Dr. Murray is supposed to email it to me.

RELIEF REQUESTED: I need a copy of the refusal of provision of an outside pulmonary consult for my files.

ACTION TAKEN TO INFORMALLY RESOLVE COMPLAINT:

CORRECTIONAL COUNSELOR: M. Ford/  DATE: 10-15-2021

UNIT MANAGER'S COMMENTS/ASSISTANCE:

UNIT MANAGER:  *See below for instructions* DATE: 10/18/21

You need to request this through FOIA.

Report Status: Final

FUSCO, EMILIO



Patient Information	Specimen Information	Client Information
<b>FUSCO, EMILIO</b>  <b>DOB: 10/09/1968 AGE: 52</b> Gender: M Phone: 978.796.1000 Patient ID: 02689-748 Health ID: 8573026132052114	Specimen: WC871714H Requisition: 0001151  Collected: 12/21/2020 / 10:00 EST Received: 12/22/2020 / 04:39 EST Reported: 12/25/2020 / 06:15 EST	Client #: 10767124 CA000000 FMC-DEVENS 42 PATTON RD DEVENS, MA 01434-3802

## SARS CoV 2 (COVID-19) Tests

Test Name	Result	Reference Range	Lab
SARS CoV 2 RNA(COVID 19), QUALITATIVE NAAT			NL2
<b>SARS CoV 2 RNA</b>	<b>DETECTED</b>	NOT DETECTED	
<p>A Detected result is considered a positive test result for COVID-19. This indicates that RNA from SARS-CoV-2 (formerly 2019-nCoV) was detected, and the patient is infected with the virus and presumed to be contagious. If requested by public health authority, specimen will be sent for additional testing.</p> <p>Please review the "Fact Sheets" and FDA authorized labeling available for health care providers and patients using the following websites:  <a href="https://www.questdiagnostics.com/home/Covid-19/HCP/QuestLDT/fact-sheet.html">https://www.questdiagnostics.com/home/Covid-19/HCP/QuestLDT/fact-sheet.html</a> <a href="https://www.questdiagnostics.com/home/Covid-19/Patients/QuestLDT/fact-sheet.html">https://www.questdiagnostics.com/home/Covid-19/Patients/QuestLDT/fact-sheet.html</a></p> <p>This test has been authorized by the FDA under an Emergency Use Authorization (EUA) for use by authorized laboratories.</p> <p>Due to the current public health emergency, Quest Diagnostics is receiving a high volume of samples from a wide variety of swabs and media for COVID-19 testing. In order to serve patients during this public health crisis, samples from appropriate clinical sources are being tested. Negative test results derived from specimens received in non-commercially manufactured viral collection and transport media, or in media and sample collection kits not yet authorized by FDA for COVID-19 testing should be cautiously evaluated and the patient potentially subjected to extra precautions such as additional clinical monitoring, including collection of an additional specimen.</p> <p>Methodology: Nucleic Acid Amplification Test (NAAT) includes RT-PCR or TMA</p> <p>Additional information about COVID-19 can be found at the Quest Diagnostics website: <a href="http://www.QuestDiagnostics.com/Covid19">www.QuestDiagnostics.com/Covid19</a>.</p> <p>Physician Comments:</p>			

## PERFORMING SITE:

NL2 QUEST DIAGNOSTICS MASSACHUSETTS LLC, 200 FOREST STREET 3RD FLOOR, SUITE A, MARLBOROUGH, MA 01752-3023 Laboratory Director: SALIM E KABAWAT, MD, CLIA: 22D2051942

12/28/2020 4:14:03 PM -0500 UMASS MEMORIAL1

PAGE 2 OF 4

00089-748

Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12116670648

Page 1 of 3

**H&P by Anthony C. Lorusso, MD at 12/28/2020 4:09 PM**

Author: Anthony C. Lorusso, MD	Service: Family Medicine	Author Type: Physician
Filed: 12/28/2020 4:12 PM	Date of Service: 12/28/2020 4:09 PM	Status: Signed
Editor: Anthony C. Lorusso, MD (Physician)		

**HISTORY AND PHYSICAL****SUBJECTIVE:****CHIEF COMPLAINT:**

COVID-19, worsening shortness of breath and hypoxia

**HISTORY OF PRESENT ILLNESS:**

Patient is a 52-year-old male with no significant past medical history who presents from Devon prison with known COVID-19 infection due to worsening shortness of breath and hypoxia. The patient states that he was in his normal state of health until around 12/21/2020. He had a roommate who tested positive for Covid and subsequently tested positive himself. His shortness of breath is worse with exertion and better with rest. He continues to endorse cough and severe myalgias. Otherwise, he states he is feeling generally well. He denies any nausea or vomiting. No recent fever or chills. No current chest pain. No dysuria or hematuria.

In the ED, the patient had a CBC remarkable for leukopenia and lymphopenia. He had a chest x-ray showing bilateral patchy airspace opacities consistent with COVID-19 pneumonia. He had a negative troponin and BNP.

**REVIEW OF SYSTEMS:**

All other systems are negative

**PAST MEDICAL HISTORY:**

History reviewed. No pertinent past medical history.

**PAST SURGICAL HISTORY:**

Past Surgical History:

Procedure

Laterality

Date

- HEMORRHOID SURGERY

**MEDICATIONS:**

Prior to Admission medications

Not on File

**ALLERGIES:**

Patient has no known allergies.

**SOCIAL HISTORY:**

Social History

Tobacco Use

- Smoking status:

Types:

- Smokeless tobacco:

Substance Use Topics

- Alcohol use:

- Drug use:

Former Smoker

Cigarettes

Former User

Not Currently

Not Currently

12/28/2020 4:14:03 PM -0500 UMASS MEMORIAL1

Page 2 of 3

Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12116670648  
H&P by Anthony C. Lorusso, MD at 12/28/2020 4:09 PM (continued)

**Social Documentation**

No social documentation on file.

**FAMILY HISTORY:**

No family history on file.

**OBJECTIVE:****VITAL SIGNS FOR PAST 24 Hours ([High] [Low] (Last Recorded Value)):**

Temp: [37.6 °C (99.6 °F)-37.6 °C (99.7 °F)] 37.6 °C (99.7 °F)

Heart Rate: [73-84] 84

Resp: [18-24] 23

BP: (119-139)/(78-88) 137/85

SpO2: [92 %-96 %] 95 %

**PHYSICAL EXAM:**

General: NAD

Head: NCAT. EOMI. PERRL. No scleral icterus. MMM.

Neck: No adenopathy, no nuchal rigidity, trachea midline.

Cardiac: RRR, no obvious murmurs

Lungs: Moderate air movement. Faint crackles at bases bilaterally.

Abdomen: Soft, non-tender and non-distended. No rebound or guarding.

Back: Symmetric. Normal ROM. No CVA tenderness

Extremities: No deformity or edema.

Skin: Warm and dry. No rashes or petechiae.

Neurologic: AAOx3. Moving all four extremities spontaneously and equally. No gross deficits.

**LAB:**

I have personally reviewed the patient's lab results from the past 24 hours.

**IMAGING /OTHER STUDIES:**

I have personally reviewed the patient's imaging results

**HOSPITAL PROBLEMS:**

Principal Problem:

Acute respiratory failure with hypoxia (CMS/HCC)

Active Problems:

COVID-19

Multifocal pneumonia

**Assessment & Plan**

\* Acute respiratory failure with hypoxia (CMS/HCC)

Assessment & Plan

2/2 COVID-19. Patient currently requiring 2L O2 via NC to maintain adequate oxygen saturation.

- Titrate O2 as needed to maintain saturation > 94%

Multifocal pneumonia

Assessment & Plan

2/2 COVID-19. No clinical indication for antibiotics at this time as very unlikely to have superimposed bacterial PNA based on duration of symptoms.

12/28/2020 4:14:03 PM -0500 UMASS MEMORIAL1

PAGE 4 OF 4

Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12116670648  
H&P by Anthony C. Lorusso, MD at 12/28/2020 4:09 PM (continued)

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Page 3 of 3

- Defer antibiotics

**COVID-19***Assessment & Plan*

Patient with known COVID-19 presenting from Devons with worsening respiratory status. Labs notable for leukopenia and lymphopenia. LFTs not sent by ED so will send now in case patient meets criteria for remdesivir. CXR with bilateral patchy airspace opacities c/w COVID PNA.

- Defer antibiotic therapy
- Start dexamethasone; will discuss remdesivir with COVID infection control
- Prone positioning as needed
- Supportive care

**GLOBAL PLAN OF CARE:**

Code Status: Full Code

Medical Decision Maker:  
Patient

**FLUIDS/ELECTROLYTES/NUTRITION**  
Regular diet

**VTE PROPHYLAXIS**  
enoxaparin

**DISCHARGE PLANNING/PLACEMENT:**

I have discussed the plan of care with: Patient.

I have reviewed, updated, and verified this note's content.

**Signature:**  
Anthony C. Lorusso, MD

*Electronic Signature*

Emilio Fusco DOB: 10/9/1968 MRN: 801291691 CSN: 12116670648

12/29/2020 1:18:45 PM -0500 UMASS MEMORIAL1

00089-748



UMass Memorial Medical Center-  
Memorial Campus 2 West Unit  
119 Belmont Street  
WORCESTER MA 01605-2835

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Acct #: 7014469370  
Adm: 12/28/2020, D/C: —

**Progress Notes by Anthony C. Lorusso, MD at 12/29/2020 12:46 PM**

Author: Anthony C. Lorusso, MD  
Filed: 12/29/2020 12:47 PM

Service: Family Medicine  
Date of Service: 12/29/2020 12:46 PM

Author Type: Physician  
Status: Signed

Editor: Anthony C. Lorusso, MD (Physician)

**PROGRESS NOTE**

**SUBJECTIVE:**

**CHIEF COMPLAINT:**

SOB

**24 HOUR INTERVAL HISTORY:**

The patient states that he is not feeling very well this morning. He is having worsening shortness of breath and hypoxia. He also endorses some heart palpitations and informs me that he carries a diagnosis of Wolff-Parkinson-White syndrome and potentially had an ablation in the past. His records are difficult for me to locate as he is a Devens prison patient. I did review his telemetry and checked an EKG on him, both of which showed normal sinus rhythm without evidence of an accessory pathway. The patient denies any chest pain. No nausea, vomiting or diarrhea. He understands a plan for the remainder of the day and has no additional questions for me at this time.

**MEDICATIONS:**

All medications reviewed.

**OBJECTIVE:**

**VITAL SIGNS FOR PAST 24 Hours ([High] [Low] (Last Recorded Value)):**

Temp: [36.5 °C (97.7 °F)-37.8 °C (100 °F)] 36.9 °C (98.4 °F)

Heart Rate: [62-100] 74

Resp: [18-26] 20

BP: (112-152)/(66-88) 128/72

SpO2: [91 %-97 %] 91 %

**I/Os LAST 24 HOURS:**

Intake/Output Summary (Last 24 hours) at 12/29/2020 1234

Last data filed at 12/29/2020 0753

Gross per 24 hour

Intake 480 ml

Output 700 ml

Net -220 ml

**PHYSICAL EXAM:**

General: NAD

Head: NCAT. EOMI. PERRL. No scleral icterus. MMM.

Neck: No adenopathy, no nuchal rigidity, trachea midline.

Cardiac: RRR, no obvious murmurs

Lungs: Moderate air movement. Faint basilar crackles bilaterally.

Abdomen: Soft, non-tender and non-distended. No rebound or guarding.

Back: Symmetric. Normal ROM. No CVA tenderness

Extremities: No deformity or edema.

Skin: Warm and dry. No rashes or petechiae.

Neurologic: AAOx3. Moving all four extremities spontaneously and equally. No gross deficits.

Generated by DIOJ at 12/29/20 1:17 PM



12/29/2020 1:18:45 PM -0500 UMASS MEMORIAL1



UMass Memorial Medical Center-  
Memorial Campus 2 West Unit  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Acct #: 7014469370  
Adm: 12/28/2020, D/C: —

Progress Notes by Anthony C. Lorusso, MD at 12/29/2020 12:46 PM (continued)

**LAB:**

I have personally reviewed the patient's lab results from the past 24 hours.

**IMAGING/OTHER STUDIES:**

I have personally reviewed the patient's imaging results

**HOSPITAL PROBLEMS:**

Principal Problem:

Acute respiratory failure with hypoxia (CMS/HCC)

Active Problems:

COVID-19

Multifocal pneumonia

**Assessment & Plan**

\* Acute respiratory failure with hypoxia (CMS/HCC)

Assessment & Plan

2/2 COVID-19. Patient currently requiring 2-3L O2 via NC to maintain adequate oxygen saturation.

- Titrate O2 as needed to maintain saturation > 94%

Wolff-Parkinson-White (WPW) syndrome

Assessment & Plan

Patient reports diagnosis of this with ? Ablation procedure in past but no records. Telemetry reviewed, showing NSR with no evidence of accessory pathway. ECG also ordered showing NSR with rate = 91.

- Telemetry

Multifocal pneumonia

Assessment & Plan

2/2 COVID-19. No clinical indication for antibiotics at this time as very unlikely to have superimposed bacterial PNA based on duration of symptoms.

- Defer antibiotics

COVID-19

Assessment & Plan

Patient with known COVID-19 presenting from Devons with worsening respiratory status. Labs notable for leukopenia and lymphopenia. LFTs not sent by ED so will send now in case patient meets criteria for remdesivir. CXR with bilateral patchy airspace opacities c/w COVID PNA.

- Defer antibiotic therapy
- Dexamethasone + remdesivir
- Prone positioning as needed
- Supportive care

12/29/2020 1:18:45 PM -0500 UMASS MEMORIAL1



**UMassMemorial  
Health Care**

UMass Memorial Medical Center-  
Memorial Campus 2 West Unit  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Acct #: 7014469370  
Adm: 12/28/2020, D/C: —

---

Progress Notes by Anthony C. Lorusso, MD at 12/29/2020 12:46 PM (continued)

---

**GLOBAL PLAN OF CARE:**  
Code Status: Full Code

**Medical Decision Maker:**  
Patient

I have reviewed, updated, and verified this note's content..

**SIGNATURE:**  
Anthony C. Lorusso, MD

*Electronic Signature*

Electronically signed by Anthony C. Lorusso, MD at 12/29/2020 12:47 PM

---

**END OF REPORT**

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01/05/2021 8:15:25 AM -0500 UMASS MEMORIAL1

03089.748

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12116670648

**H&P by Nicholas A. Marshall, PA at 1/2/2021 12:22 AM**

Author: Nicholas A. Marshall, PA

Service: Critical Care

Author Type: Physician Assistant

Filed: 1/2/2021 12:31 AM

Date of Service: 1/2/2021 12:22 AM

Status: Attested

Editor: Nicholas A. Marshall, PA (Physician Assistant)

Cosigner: Shahzad W. Khan, MD at  
1/5/2021 8:14 AM

Attestation signed by Shahzad W. Khan, MD at 1/5/2021 8:14 AM

PT was staffed overnight with the eicu attending, for my impressions please refer to my progress note from that corresponding day.

**CRITICAL CARE HISTORY AND PHYSICAL****PATIENT SUMMARY:**

52 with limited known medical issues. Presented from Devens with COVID, admitted to the floor for O2 requirement. To be transferred to CCU for need for HFNC.

**SUBJECTIVE: HPI****HISTORY OF PRESENT ILLNESS:**

52-year-old male with prior history of possible WPW as well as question OSA. Patient is a very poor historian. Patient states that he has had worsening DOE over the past few weeks, with outbreak in the jail of COVID-19 patients had a positive contact and later tested positive.

Transferred to UMass 12/29 for increasing O2 requirement. Was admitted to the floor for nasal cannula requirement in the setting of Covid pneumonia. Was started on remdesivir and Decadron. Day of transfer patient with increased shortness of breath and increased O2 requirement. CT PE study was completed which did not show clots however does show significant GGO with bilateral lower lobe consolidations. Patient has remained hemodynamically stable since hospitalization.

On admission to the ICU patient on 12 L Oxymizer satting in the low 90s. Patient does not seem to be in distress. Patient is able to talk in full, spirited, sentences.

**Review of Systems**

Constitutional: Negative for activity change and fever.

HENT: Positive for congestion. Negative for rhinorrhea.

Respiratory: Positive for cough and shortness of breath. Negative for sputum and wheezing.

Cardiovascular: Negative for chest pain.

Gastrointestinal: Negative for abdominal pain and diarrhea.

**PAST MEDICAL HISTORY:**

History reviewed. No pertinent past medical history.

**PAST SURGICAL HISTORY:**

Past Surgical History:

Procedure

• HEMORRHOID SURGERY

Laterality

Date

**MEDICATIONS:**

Prior to Admission medications

Not on File

**ALLERGIES:**

Patient has no known allergies.

Fusco, Emilio (MRN: 801291691) Printed by [KHANS04] at 1/5/21 8:15 AM

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12116670648  
 H&P by Nicholas A. Marshall, PA at 1/2/2021 12:22 AM (continued)

**SOCIAL HISTORY:**

## Social History

## Tobacco Use

- Smoking status: Former Smoker
- Packs/day: 1.00
- Years: 30.00
- Pack years: 30.00
- Types: Cigarettes
- Start date: 12/28/1970
- Quit date: 12/28/2010
- Years since quitting: 10.0
- Smokeless tobacco: Former User
- Quit date: 12/29/2010

## Substance Use Topics

- Alcohol use: Not Currently
- Frequency: Never
- Drug use: Not Currently

## Social Documentation

No social documentation on file.

**FAMILY HISTORY:**

No family history on file.

**OBJECTIVE:****VITAL SIGNS FOR PAST 24 Hours ([High] [Low] (Last Recorded Value)):**

Temp: [36.7 °C (98.1 °F)-37.5 °C (99.5 °F)] 37.5 °C (99.5 °F)

Heart Rate: [55-82] 55

Resp: [17-26] 23

BP: (102-141)/(64-94) 121/80

SpO2: [84 %-95 %] 93 %

Set FiO2 (O2%): [50 %] 50 %

**Physical Exam**Constitutional:

General: He is awake. He is not in acute distress.  
 Appearance: Normal appearance. He is not ill-appearing.

HENT:

Head: Normocephalic and atraumatic.  
 Mouth/Throat:  
 Mouth: Mucous membranes are moist.

Eyes:

Conjunctiva/sclera: Conjunctivae normal.

Cardiovascular:

Rate and Rhythm: Normal rate and regular rhythm.  
 Heart sounds: Normal heart sounds.

Pulmonary:

Effort: Pulmonary effort is normal.  
 Breath sounds: Normal breath sounds.

Abdominal:

Fusco, Emilio (MRN: 801291691) Printed by [KHANS04] at 1/5/21 8:15 AM

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12116670648  
 H&P by Nicholas A. Marshall, PA at 1/2/2021 12:22 AM (continued)

General: Abdomen is flat.

Tenderness: There is no abdominal tenderness.

Neurological:

Mental Status: He is alert.

GCS: GCS eye subscore is 4. GCS verbal subscore is 5. GCS motor subscore is 6.

Psychiatric:

Behavior: Behavior is cooperative.

**LAB:**

I have personally reviewed the patient's lab results.

**IMAGING /OTHER STUDIES:**

I have personally reviewed the patient's imaging results

**HOSPITAL PROBLEM LIST:**

Principal Problem:

Acute respiratory failure with hypoxia (CMS/HCC)

Active Problems:

COVID-19

Multifocal pneumonia

Wolff-Parkinson-White (WPW) syndrome

**Assessment & Plan**

**Nervous**

Assessment & Plan

No active issue.

**Respiratory**

Assessment & Plan

No known pulm history, former smoker. Pt stated had "breathing test" which was reported as "not good" but no further description. Admitted to the floor with COVID PNA. Now increased O2 requirement, on NRB with sats to mid-80's with activities.

- repeat CXR
- Remdesivir and decadron
- Consider escalation for bacterial PNA
- HFNC, sats >90%
- Self proning
- Avoid respiratory sedative meds

**Circulatory**

Assessment & Plan

Reports remote history of WPW with ablation. Has been HD stable since admission. Negative trop, minimal D.dimer on 12/28. Has remained in NSR.

- Follow HD status.

**Genitourinary**

Assessment & Plan

Baseline normal renal function. Cr 0.88-1.06 since admission. Has been taking PO fluids since admission

- Fluids as needed

Fusco, Emilio (MRN: 801291691) Printed by [KHANS04] at 1/5/21 8:15 AM

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12116670648  
 H&P by Nicholas A. Marshall, PA at 1/2/2021 12:22 AM (continued)

- Daily BMP with electrolyte repletion

**Endocrine/Metabolic**  
 Assessment & Plan

No known history of DM. Ordered for ICU COVID glycemic control.

**Hematologic**  
 Assessment & Plan

H/H 13/37, no signs of bleeding.  
 - Daily CBC

**Infectious/Inflammatory**  
 Assessment & Plan

Positive COVID 12/28. Has been on decadron and remdesivir (to end 1/2). CXR with bilateral patchy infiltrates to bases. CT with diffuse bilateral GGO with consolidations to bases. Afebrile, WBC now 8.2, was leukopenic to 3 on arrival and slowly increased.  
 - Continue with final dose of remdesivir  
 - Continue with decadron for total of 10 day course  
 - Consider additional bacterial culture given worsening

**GLOBAL PLAN OF CARE:**

**Code Status:** Full Code

**Global Issues**

Analgesia/Sedation: Orders reviewed  
 Mobility Level That Needs to Be Ordered: 2  
 Pressure Injury: No, primary prevention measures in place  
 DVT: Not indicated  
 Stress Ulcer: Orders reviewed  
 Glycemic Control: Other  
 Central Line Necessity: Not Needed  
 Urinary Catheter Indicated Today: Not Needed  
 Is Trach Placement needed?: No  
 De-escalation of Antibiotics: No  
 Medical Decision Maker: Patient  
 Disposition: Keep  
 PCP Notification  
 PCP was notified about ICU admission, major condition changes, and code status changes?: No PCP  
 Medical Decision Maker:  
 Medical Decision Maker: Patient

**FLUIDS/ELECTROLYTES/NUTRITION**

**VTE PROPHYLAXIS**  
 enoxaparin

Fusco, Emilio (MRN: 801291691) Printed by [KHANS04] at 1/5/21 8:15 AM

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12116670648  
H&P by Nicholas A. Marshall, PA at 1/2/2021 12:22 AM (continued)

Page 5 of 5

VTE Prevention/Management: AROM (active range of motion) performed

**DISCHARGE PLANNING/PLACEMENT:**

I have discussed the plan of care with: Patient, Attending and Inter-professional team  
This patient is critically ill with acute organ failure, present and threatened. Today, I personally spent 90 minutes managing critical care services for this critically ill patient with life-threatening organ failure,

**Respiratory Failure:**

I made serial acute adjustments, and evaluations for further adjustments, to life saving oxygenation support to manage, prevent worsening and/or hasten recovery of acute life-threatening hypoxemia.  
Care during the described time interval was provided by me. I have reviewed this patient's available data, including medical history, events of note, physical examination and test results as part of my evaluation

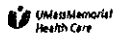
**SIGNATURE:**

Nicholas A. Marshall, PA

***Electronic Signature***

Emilio Fusco DOB: 10/9/1968 MRN: 801291691 CSN: 12116670648

00089-748



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## UMass Memorial Health Care Contacts

### Contact Information:

UMass Memorial Medical Center:	508-334-1000	Marlborough:	508-481-5000
Health Alliance Burbank and Leominster:	978-466-2000	Clinton:	978-368-3000

This After Visit Summary has been printed on the day of discharge and sent to the facility with the patient.

### Patient Demographics

Address	Phone
333 South Street	508-793-1202 (Home)
Shrewsbury MA 01545	508-793-1202 (Mobile)

### Basic Information

Date Of Birth	Gender Identity	Race	Ethnicity	Preferred Language	Preferred Written Language
10/9/1968	Male	Other	Unknown	English	English

### Code Status Information

Code Status  
Full Code

### Health Care Agents

There are no Health Care Agents on file.

### Designated Caregiver

Name	Caregiver	Relationship to Patient	Contact Number	Date Caregiver notified of discharge
	Declined to Appoint			

### Advance Care Planning Documents

Document Type	Status	Effective Date	Expiration Date	Received On	Description
MOLST	Not Received				
Health Care Proxy	Not Received				
Health Care Proxy	Received			01/06/21	01-06-2021
Advance Directive	Not Received				

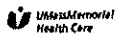
### Admission and Discharge Information

Admission Date: December 28, 2020

Discharge Date: January 12, 2021

Discharge Unit: UMass Memorial Medical Center-  
Memorial Campus 6 South Unit  
Discharge Unit Phone Number: 508-334-6395

Fusco, Emilio (MR # 801291691) DOB: 10/09/1968 Printed at 1/12/21 1:14 PM



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## Admission and Discharge Information (continued)

### Patient Care Team

Berhan S Yeh, MD  
978-796-1576

PCP - General

### Attending and Consulting Providers at Discharge

Provider	Service	Role	Specialty	Primary office phone
Jason W. Numbers, MD	—	Attending Provider	Hospital Medicine	508-334-5571

### Reason for Hospitalization

### Allergies

No Known Allergies

: 2 weeks ago (12/28/2020)

### Discharge Instructions

None

### Patient Medications

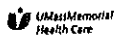
#### START taking these medications

Comments

acetaminophen 325 mg tablet  
Take 2 tablets (650 mg total) by mouth every 4 hours as  
needed for pain.  
Commonly known as: TYLENOL

### Medication Administration Record, Last 2 Days for Fusco, Emilio as of 01/12/21 1314

Legend:				Other Actions	
Given Time	Provider Hold Time	Not Given (Time)	Due Time	Time	Time-Action
<b>Medications</b>		<b>01/11/21</b>			
acetaminophen (TYLENOL) tablet 650 mg Dose: 650 mg Freq: Every 4 hours PRN Route: oral PRN Reasons: mild pain (pain score 1-3), moderate pain (pain score 4-6), severe pain (pain score 7-10) Start: 12/28/20 1556		0504- Given		0017- Given	
aluminum-magnesium hydroxide-simethicone (MAALOX) 200-200-20 mg/5 mL suspension 30 mL Dose: 30 mL Freq: Every 4 hours PRN Route: oral PRN Reasons: indigestion, heartburn Start: 01/04/21 2042					
enoxaparin (LOVENOX) subcutaneous injection 40 mg Dose: 40 mg Freq: Every 12 hours scheduled Route: subcutaneo Start: 01/02/21 0600		0809- Given	(2100)- Not Given	0817- Given	2100
melatonin tablet 3 mg Dose: 3 mg Freq: Nightly PRN Route: oral PRN Reason: sleep Start: 01/04/21 2042					



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

### Medication Administration Record, Last 2 Days (continued) for Fusco, Emilio as of 01/12/21 1314

Medications	01/11/21	
polyethylene glycol 3350 (MIRALAX) packet 17 g Dose: 17 g Freq: Daily PRN Route: oral PRN Reason: constipation Start: 12/31/20 1407		
psyllium (METAMUCIL) 3.4 gram packet 1 packet Dose: 1 packet Freq: Daily Route: oral Start: 01/06/21 0900	(0900)- Not Given	(0900)- Not Given
senna (SENOKOT) tablet 17.2 mg Dose: 17.2 mg Freq: Daily Route: oral Start: 01/07/21 0900	(0900)- Not Given	(0900)- Not Given
<b>Discontinued Medications</b>		
Medications	01/11/21	
	1918- D/C'd	X

#### Other Instructions

Normal activity as tolerated.  
Normal activity as tolerated.

#### Activity Instructions

Normal activity as tolerated.  
Normal activity as tolerated.

#### Diet Instructions

Regular Diet

#### Isolation

Contact  
Strict-Airborne/Negative Pressure Room  
Airborne - Negative Pressure Room

#### Patient Lines, Drains and Airways

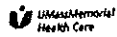
Active Lines/Drains/Airways  
None

#### Wounds

Active Wounds and Incisions  
None

#### Vital Signs

Fusco, Emilio (MR # 801291691) DOB: 10/09/1968 Printed at 1/12/21 1:14 PM



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

### Vital Signs (continued)

Temp (°C)  
Heart Rate  
Resp  
BP  
SpO2 (%)  
O2 Flow Rate (L/min) (L/min)

Most Recent  
36.7 (98.1) 01/12 1225  
84 01/12 1225  
20 01/12 1225  
125/76 01/12 1225  
97 01/12 1225  
4 01/12 1225

### Lab Results Last 24 Hours

No results found

Results were discussed with patient/caregiver by patient's provider.

### Pending Studies

Pending tests or studies can be followed up by contacting the Primary Care or Follow Up Provider or by viewing the patients chart in CareEverywhere. If studies pended they are listed below. If not listed there are no studies pending.

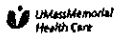
### Case Manager Comments

#### PT Rehab Goal Summary

No documentation.

#### OT Goal Summary

No documentation.



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## Discharge Summary Notes

### Discharge Summary by Jason W. Numbers, MD at 1/12/2021 12:35 PM

Author: Jason W. Numbers, MD      Service: Family Medicine      Author Type: Physician  
Filed: 1/12/2021 12:37 PM      Date of Service: 1/12/2021 12:35 PM      Status: Signed  
Editor: Jason W. Numbers, MD (Physician)

### DISCHARGE SUMMARY UMASS MEMORIAL HEALTH CARE

#### DISCHARGE INFORMATION:

Date and Time of Admission: 12/28/20 1550  
Date of Discharge: 1/12/2021

#### DISCHARGE DIAGNOSIS:

##### Problem List

##### Active Problems

\* (Principal) Acute respiratory failure with hypoxia (CMS/HCC)

ARDS (adult respiratory distress syndrome) (CMS/HCC)

COVID-19

Multifocal pneumonia

Wolff-Parkinson-White (WPW) syndrome

#### ATTENDING PHYSICIAN ON DISCHARGE:

Attending Provider: Jason W. Numbers, MD 508-334-5571

#### FOLLOW-UPS AND SCHEDULED APPOINTMENTS:


No future appointments.

#### DISCHARGE MEDICATIONS:

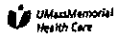
##### Discharge Medication list:

##### Discharge Medications

##### New Medications

	Sig	Disp	Refill
 acetaminophen 325 mg tablet Commonly known as: TYLENOL	Take 2 tablets (650 mg total) by mouth every 4 hours as needed for pain.		0





MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## Discharge Summary Notes (continued)

**Discharge Summary by Jason W. Numbers, MD at 1/12/2021 12:35 PM (continued)**

### ALLERGIES:

Patient has no known allergies.

### IMMUNIZATION HISTORY:

There is no immunization history for the selected administration types on file for this patient.

### PRESENTATION INFORMATION:

#### HISTORY OF PRESENT ILLNESS:

#### HISTORY OF PRESENT ILLNESS:

52-year-old male with prior history of possible WPW as well as question OSA. Patient is a very poor historian. Patient states that he has had worsening DOE over the past few weeks, with outbreak in the jail of COVID-19 patients had a positive contact and later tested positive.

Transferred to UMass 12/29 for increasing O2 requirement. Was admitted to the floor for nasal cannula requirement in the setting of Covid pneumonia. Was started on remdesivir and Decadron. Day of transfer patient with increased shortness of breath and increased O2 requirement. CT PE study was completed which did not show clots however does show significant GGO with bilateral lower lobe consolidations. Patient has remained hemodynamically stable since hospitalization.

On admission to the ICU patient on 12 L Oxymizer sitting in the low 90s. Patient does not seem to be in distress. Patient is able to talk in full, spirited, sentences.

### PAST MEDICAL HISTORY:

History reviewed. No pertinent past medical history.

### PAST SURGICAL HISTORY:

#### Past Surgical History:

##### Procedure

##### Laterality

##### Date

- HEMORRHOID SURGERY

### PAST FAMILY HISTORY:

No family history on file.

### PAST SOCIAL HISTORY:

#### Social History

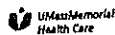
##### Socioeconomic History

- Marital status: Single
- Spouse name: Not on file
- Number of children: Not on file
- Years of education: Not on file
- Highest education level: Not on file

##### Occupational History

- Not on file

##### Social Needs



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

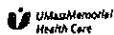
Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## Discharge Summary Notes (continued)

### Discharge Summary by Jason W. Numbers, MD at 1/12/2021 12:35 PM (continued)

- Financial resource strain: Not on file
- Food insecurity
  - Worry: Not on file
  - Inability: Not on file
- Transportation needs
  - Medical: Not on file
  - Non-medical: Not on file
- Tobacco Use
  - Smoking status: Former Smoker
    - Packs/day: 1.00
    - Years: 30.00
    - Pack years: 30.00
    - Types: Cigarettes
    - Start date: 12/28/1970
    - Quit date: 12/28/2010
    - Years since quitting: 10.0
  - Smokeless tobacco: Former User
    - Quit date: 12/29/2010
- Substance and Sexual Activity
  - Alcohol use: Not Currently
    - Frequency: Never
  - Drug use: Not Currently
  - Sexual activity: Defer
- Lifestyle
  - Physical activity
    - Days per week: Not on file
    - Minutes per session: Not on file
  - Stress: Not on file
- Relationships
  - Social connections
    - Talks on phone: Not on file
    - Gets together: Not on file
    - Attends religious service: Not on file
    - Active member of club or organization: Not on file
    - Attends meetings of clubs or organizations: Not on file
    - Relationship status: Not on file
  - Intimate partner violence
    - Fear of current or ex partner: Not on file
    - Emotionally abused: Not on file
    - Physically abused: Not on file
    - Forced sexual activity: Not on file
- Other Topics
  - Concern

- Not on file
- Social History Narrative
  - Not on file



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## Discharge Summary Notes (continued)

**Discharge Summary by Jason W. Numbers, MD at 1/12/2021 12:35 PM (continued)**

### HOSPITAL COURSE:

#### **ARDS (adult respiratory distress syndrome) (CMS/HCC)**

Patient presented with COVID pneumonia and developed ARDS associated with this. He was treated with remdesivir and dexamethasone and despite this he required ICU transfer for proning and HFNC. This worsening was felt to be possibly due to superimposed bacterial pneumonia versus ARDS. He was able to be weaned to 4L of oxygen. I contacted the physician at Fort Devens where patient was transferred from and explained the need for continued oxygen supplementation. The provider accept the patient into their care for continued attempts at weaning the patients oxygen.

#### **Acute respiratory failure with hypoxia (CMS/HCC)**

Secondary to COVID pneumonia with associated ARDS vs superimposed bacterial pneumonia. He is s/p dexamethasone and remdesivir. He is also s/p antibiotics for presumed bacterial pneumonia. He is currently continuing to have DOE with significant hypoxia with ambulation. I confirmed with Fort Devens provider that they are willing to have patient return to their facility with his current oxygen need.

#### **COVID-19**

Patient with known COVID-19 presented from Devens with worsening respiratory status. Initial labs notable for leukopenia and lymphopenia. LFTs wnl. CXR showed bilateral patchy airspace opacities. Patient developed worsening oxygen requirement and eventually was transferred to the ICU for HFNC. He was treated with dexamethasone and remdesivir. He has completed these regimens and remains slightly hypoxic. He was discharged to Devens for further care.

#### **Multifocal pneumonia**

CXR showing multifocal pneumonia likely 2/2 to COVID. He was treated with remdesivir and decadron. He had worsening hypoxia and ended up in the ICU on HFNC. He was treated for potential superimposed bacterial infection and has completed this therapy as well. He continues to remain hypoxic felt to be due to covid and ARDS vs superimposed bacterial pneumonia.

#### **Wolff-Parkinson-White (WPW) syndrome**

Patient with reported previous diagnosis of WPW s/p ablation procedure in 2008. He is not currently requiring medication for this. Patient did have regular tachycardia with exertion while admitted that was found to be from sinus tachycardia and was due to patients pulmonary diseases.

#### **ARDS (adult respiratory distress syndrome) (CMS/HCC)**

See discussions above.

### DISCHARGE DAY INFORMATION:

#### **DISCHARGE PHYSICAL EXAM:**

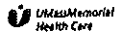
Vital signs: Blood pressure 125/76, pulse 84, temperature 36.7 °C (98.1 °F), temperature source Oral, resp. rate 20, height 1.753 m (5' 9"), weight 101.1 kg (222 lb 14.2 oz), SpO2 97 %.

General appearance: Alert, In no acute distress

HEENT: Normocephalic, atraumatic

Lungs: bibasilar crackles, no wheezing, no rhonchi

Fusco, Emilio (MR # 801291691) DOB: 10/09/1968 Printed at 1/12/21 1:14 PM



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## Discharge Summary Notes (continued)

### Discharge Summary by Jason W. Numbers, MD at 1/12/2021 12:35 PM (continued)

Heart: Rate and Rhythm: regular and Murmurs, rubs or gallups: none  
Abdomen: Soft, non-tender throughout, normoactive bowel sounds and No rebound or guarding  
Extremities: No cyanosis, clubbing or edema  
Skin: No rash or ulcers  
Neurologic: Alert and oriented x 3

### LAB AND RADIOLOGY:

#### LABS:

Pertinent labs include

#### Recent Results (from the past 48 hour(s))

##### Basic metabolic panel

Collection Time: 01/11/21 8:14 AM

Result	Value	Ref Range
NA	137	135 - 145 mmol/L
K	4.7	3.5 - 5.3 mmol/L
Cl	103	97 - 110 mmol/L
CO2	30	24 - 32 mmol/L
BUN	17	7 - 23 mg/dL
Creatinine	0.99	0.60 - 1.30 mg/dL
Glucose	89	70 - 99 mg/dL
Calcium	8.9	8.7 - 10.7 mg/dL
Anion Gap	4 (L)	5 - 15
eGFR Non-African American	87 (L)	>=90 mL/min/BSA
eGFR African American	>90	>=90 mL/min/BSA

#### IMAGING:

Pertinent Imaging results include:

Ecg 12 Lead

Result Date: 1/10/2021

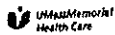
Impression: NORMAL SINUS RHYTHM POSSIBLE LEFT ATRIAL ENLARGEMENT WHEN COMPARED WITH ECG OF 29-DEC-2020 09:33, NO SIGNIFICANT CHANGE WAS FOUND Confirmed by Saucedo, Jason (2084) on 1/10/2021 3:30:50 PM

Ecg 12 Lead

Result Date: 12/31/2020

Impression: NORMAL SINUS RHYTHM POSSIBLE LEFT ATRIAL ENLARGEMENT WHEN COMPARED WITH ECG OF 28-DEC-2020 13:54, (UNCONFIRMED) NO SIGNIFICANT CHANGE WAS FOUND Confirmed by TIGHE, DENNIS (26011) on 12/31/2020 8:14:20 AM

Fusco, Emilio (MR # 801291691) DOB: 10/09/1968 Printed at 1/12/21 1:14 PM



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## Discharge Summary Notes (continued)

### Discharge Summary by Jason W. Numbers, MD at 1/12/2021 12:35 PM (continued)

Ecg 12 Lead For Preop? No

Result Date: 12/30/2020

Impression: NORMAL SINUS RHYTHM NORMAL ECG NO PREVIOUS ECGS AVAILABLE Confirmed by Ahmed, Hanna (2174) on 12/30/2020 4:55:47 PM

Ct Chest Pulmonary Embolism With Contrast

Result Date: 1/1/2021

Narrative: EXAMINATION: CT Chest with Contrast to evaluate for PE INDICATION: Shortness of breath Covid 19 positive. TECHNIQUE: Contrast enhanced CT was performed following administration of Omnipaque 350 intravenous contrast with CT PE protocol. Axial reconstructions at 1, 1.25 or 1.5mm and 5 mm were performed. Coronal and sagittal reformatted sequences were performed. Axial MIP images were performed. For radiation dose control at least one of the following techniques was used in this procedure (1) Automated exposure control (2) Adjustment of the mA and/or kV according to patient size (3) Use of iterative reconstruction technique COMPARISON: None FINDINGS: PULMONARY ARTERIES: Timing bolus: Good opacification of the pulmonary arteries to the segmental level. Limited evaluation of the subsegmental branches secondary to respiratory motion. The pulmonary arteries opacify normally without evidence of filling defects or abrupt vessel cut off to suggest pulmonary embolus. The RV:LV is less than one with no evidence of right heart strain. FINDINGS: LUNGS AND PLEURA: Bilateral peribronchial subpleural groundglass and consolidative opacities are noted throughout both lungs. There are no pleural effusions. MEDIASTINUM: The heart is normal in size. There is no pericardial effusion. There is an mild atherosclerotic calcification of the coronary arteries. NODES: Subcarinal lymph node measures 11 mm in short axis. Right hilar lymph node measures 12 mm in short axis. UPPER ABDOMEN (limited): No supraclavicular or axillary adenopathy. BONES AND SOFT TISSUES: No destructive osseous lesions. Degenerative changes of the thoracic spine. No soft tissue nodules or masses.

Impression: 1. No evidence of pulmonary embolus to the segmental level. Limited evaluation of subsegmental branches secondary to extensive respiratory motion. 2. Extensive bilateral groundglass and consolidative opacities in a peribronchial vascular and subpleural distribution consistent with Covid related pneumonia. FS1HPACSW31

Xr Chest Portable 1 View

Result Date: 12/28/2020

Narrative: COMPARISON: None available. FINDINGS: Patchy bibasilar airspace opacities are present. The cardiac silhouette and mediastinal contours are unremarkable. No pleural effusion or CHF is identified. There is no pneumothorax.

Impression: Multifocal pneumonia.. LS1RADW03E

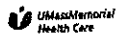
#### CONSULTS:

IP CONSULT TO RESPIRATORY CARE

CONDITION: Good

Code Status: Full Code

Fusco, Emilio (MR # 801291691) DOB: 10/09/1968 Printed at 1/12/21 1:14 PM



MEM 6 SOUTH  
119 Belmont Street  
WORCESTER MA 01605-2935

Patient Name: Fusco, Emilio  
MRN: 801291691, DOB: 10/9/1968, Sex: M  
Adm: 12/28/2020

## Discharge Summary Notes (continued)

### Discharge Summary by Jason W. Numbers, MD at 1/12/2021 12:35 PM (continued)

#### Medical Decision Maker:

Medical Decision Maker: Patient

**Suspected/confirmed COVID-19:** Please see details above regarding status of COVID-19 evaluation and treatment.

I spent 35 minutes performing discharge day services (e.g. examination, discussion of hospital course, follow up care and planning) as appropriate  
I saw and evaluated the patient on the date of discharge.

#### Signature:

Jason W. Numbers, MD

#### Electronic Signature

Emilio Fusco DOB: 10/9/1968 MRN: 801291691 CSN: 12116670648

## Information Sharing in MyChart

At UMass Memorial, we believe that sharing information builds trust and better relationships. We believe that you should be able to see your results and notes as soon as they are available.

However, this means that you may see results even before your healthcare provider has seen them. Some test results may be hard to understand. Other results may show a serious disease, like cancer. Most patients look up their results immediately. Others may prefer to wait until their provider's office contacts them. If you have not heard within a few days, or if you cannot wait, you may want to contact your provider's office before viewing the results on your own.



**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Race:	WHITE	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	Arena, Mark RN	Facility:	DEV	Unit:	J04
Note Date:	12/29/2020 13:43						

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1      Provider: Arena, Mark RN

Memorial Hospital Report 12/29/2020

Inmate Fusco is 51 w/ a history of WPW, s/p ablation in 2008, s/p right inguinal hernia repair and anemia. He was confirmed with COVID-19 on 12/21/20. He has reported feeling fine despite a cough. He was referred to Memorial ER on 12/28 with COVID-19, cough and low pulse oximetry. In the ER his EKG was NSR. He was alert and afebrile. HR 74. BP 128/72. Pulse oximetry 91%. He required oxygen between 2-3L to maintain adequate saturation. CXR w/ bilateral patchy airspace opacities c/w COVID PNA. The plan includes admission to the medical unit, defer ABX @ this time, begin IV Dexamethasone and Remdesivir, prone positioning as needed, and supportive care. There is no plan for discharge.

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by Arena, Mark RN on 12/29/2020 13:44

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Cosign/Review**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	Arena, Mark RN	Race:	WHITE
Encounter Date:	12/29/2020 13:43			Facility:	DEV

**Cosigned by Shaw, Megan MD/CD on 12/30/2020 13:21.**

**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Race:	WHITE	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	Arena, Mark RN	Facility:	DEV	Unit:	J04
Note Date:	12/30/2020 09:44						

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1      Provider: Arena, Mark RN

Memorial Hospital Report 12/30/2020

Inmate Fusco is admitted to Memorial Hospital with pneumonia 2/2 COVID-19 virus w/ worsening respiratory status. His lab work was notable for leukopenia and lymphopenia; as he has a known history of mild benign neutropenia. He is alert and afebrile and has reported some shortness of breath and palpitations. EKG has remained NSR. VSS. Pulse oximetry 94% on 2-3 liters. The plan includes repeat LFTs as they were sent by the ER, continue IV Dexamethasone and Remdesivir and supportive care. There is no plan for discharge @ this time.

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by Arena, Mark RN on 12/30/2020 09:45

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Cosign/Review**

Inmate Name: FUSCO, EMILIO  
Date of Birth: 10/09/1968  
Encounter Date: 12/30/2020 09:44

Sex: M  
Provider: Arena, Mark RN

Reg #: 02689-748  
Race: WHITE  
Facility: DEV

**Cosigned by Shaw, Megan MD/CD on 12/30/2020 13:24.**

**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Race:	WHITE	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Facility:	DEV	Unit:	J04
Note Date:	12/31/2020 12:05						

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1 Provider: D'Addeo, Joseph RN/UR

COMMUNITY HOSPITAL REPORT: NAME OF HOSPITAL

SERVICE: Family medicine

ADMISSION DATE: 12/28/2020

INDICATIONS FOR ADMISSION: confirmed COVID-19 Hypoxia/SOB"

HOSPITAL DAY: 3

CONDITION: stable

INTUBATED: No

COVID TEST: Qualitative NAAT COVID positive 12/21/2020

UPDATES : Inmate remains inpatient with respiratory distress 2/2 COVID pneumonia. He is A&Ox3 with c/o worsening SOB and fatigue especially with ambulation. T-100.2, HR- 72, RR-18, BP- 110/74, SaO2- 92% on 2-3 lpm n/c. Plan to continue dexamethasone and remdesivir, prone positioning as needed, and supportive care. No discharge plans at this time.

ANTICIPATED DISCHARGE: 1/3/2020

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by D'Addeo, Joseph RN/UR on 12/31/2020 12:25

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Cosign/Review**

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Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Race:	WHITE
Encounter Date:	12/31/2020 12:05			Facility:	DEV

---

**Cosigned by Shaw, Megan MD/CD on 12/31/2020 13:31.**



**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Race:	WHITE	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Facility:	DEV	Unit:	J04
Note Date:	01/04/2021 16:11						

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1 Provider: D'Addeo, Joseph RN/UR

COMMUNITY HOSPITAL REPORT: Memorial Hospital Report  
SERVICE: Critical Care  
ADMISSION DATE: 12/28/2020  
INDICATIONS FOR ADMISSION: confirmed COVID-19 Hypoxia/SOB"  
HOSPITAL DAY: 7  
CONDITION: worsened acute respiratory failure  
INTUBATED: No

COVID TEST: Qualitative NAAT COVID positive 12/21/2020  
UPDATES : Inmate remains inpatient with respiratory distress 2/2 COVID pneumonia. His o2 requirements worsened over the weekend triggering ICU admission. He is now on high flow nasal canula sating at 92%. Other VSS. He was briefly NPO due to respiratory distress but has since advanced to regular diet. Antibiotics d/c's today due to low suspicion of bacterial infections. He has completed remdesivir and continues decadron. No discharge plans at this time.

ANTICIPATED DISCHARGE: 1/7/2020

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by D'Addeo, Joseph RN/UR on 01/04/2021 16:21

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Cosign/Review**

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Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Race:	WHITE
Encounter Date:	01/04/2021 16:11			Facility:	DEV

---

**Cosigned by Shaw, Megan MD/CD on 01/05/2021 12:51.**

**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name: FUSCO, EMILIO		Reg #:	02689-748
Date of Birth: 10/09/1968	Sex: M Race: WHITE	Facility:	DEV
Note Date: 01/05/2021 15:22	Provider: D'Addeo, Joseph RN/UR	Unit:	J04

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1      Provider: D'Addeo, Joseph RN/UR

COMMUNITY HOSPITAL REPORT: Memorial Hospital Report

SERVICE: Critical Care

ADMISSION DATE: 12/28/2020

INDICATIONS FOR ADMISSION: confirmed COVID-19 Hypoxia/SOB"

HOSPITAL DAY: 8

CONDITION: worsened acute respiratory failure

INTUBATED: No

COVID TEST: Qualitative NAAT COVID positive 12/21/2020

UPDATES : Inmate remains in ICU with respiratory distress 2/2 COVID pneumonia. He continues on HFNC at 80% @50L/min. T- 98.6, P-81, R- 23, BP- 86/72, SaO2- 93%. Awake and alert with no acute distress. ABTx d/c'd - has had no impact. Remdesivir completed. Has 1 more day of decadron. Plan is to continue self proning, advance diet, IV Lasix as needed, continue to wean O2 as tolerated. No discharge plans at this time.

ANTICIPATED DISCHARGE: 1/7/2020

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by D'Addeo, Joseph RN/UR on 01/05/2021 15:51

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Cosign/Review**

---

Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Race:	WHITE
Encounter Date:	01/05/2021 15:22			Facility:	DEV

---

**Cosigned by Shaw, Megan MD/CD on 01/06/2021 16:48.**

**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name: FUSCO, EMILIO		Reg #:	02689-748
Date of Birth: 10/09/1968	Sex: M Race: WHITE	Facility:	DEV
Note Date: 01/06/2021 14:06	Provider: D'Addeo, Joseph RN/UR	Unit:	J04

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1      Provider: D'Addeo, Joseph RN/UR

COMMUNITY HOSPITAL REPORT: Memorial Hospital Report

SERVICE: Critical Care

ADMISSION DATE: 12/28/2020

INDICATIONS FOR ADMISSION: confirmed COVID-19 Hypoxia/SOB"

HOSPITAL DAY: 8

CONDITION: worsened acute respiratory failure

INTUBATED: No

COVID TEST: Qualitative NAAT COVID positive 12/21/2020

UPDATES : Inmate remains in ICU with significant hypoxia 2/2 COVID pneumonia. He continues on HFNC which had been weaned slightly to 70% / 45L/min but is requiring more O2 later in day. T- 97.2, HR- 71, RR- 21, BP- 93/71, Spo2- 97%. A&Ox3, eating meals, states he feels a little better than yesterday, asking to get OOB. Will complete course of decadron today. Treatment team remains concerned given his persistent high O2 requirements. He does not have a HCP on file at Devens, UMASS will ask him to complete one now. We have given them the contact information we have on file for his adult sons in case they need emergency medical consents if he becomes critically ill.

ANTICIPATED DISCHARGE: 1/7/2020

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by D'Addeo, Joseph RN/UR on 01/06/2021 14:38

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

JAN-08-2021 03:32PM FROM-UMMC CARE COORDINATION

+508-783-6010

T-195 P.002/002 F-168

**MASSACHUSETTS  
HEALTH CARE PROXY**

- ☐ UMass Memorial Medical Center  
☐ UMass Memorial HealthAlliance-Clinton Hospital  
☐ UMass Memorial - Marlborough Hospital  
☐ UMass Memorial Medical Group - Location: \_\_\_\_\_

NAME:

Preferred Name: Emilio  
 Legal Name: Fusco, Emilio  
 DOB: 10/9/1968 (52 yrs)  
 MRN: 801281891 MEM  
 CSN: 12118870648 Adm Date  
 12/28/2020



PRINT CLEARLY IN INK OR IMPRINT WITH PATIENT'S CARD

1

I, Emilio Fusco 02089-748, residing at  
 (print your name here)

(street address) (city/town) (state)  
 appoint as my Health Care Agent: Frankie Fusco son  
 (name of person chosen as Agent) (relationship to patient)  
 of Longmeadow MA 413 426 4461  
 (street address) (city/town) (state) (phone)

(Optional: If my Agent is unwilling or unable to serve, then I appoint as my Alternate:

Annamaria Kerrish cousin of  
 (name) (relationship to patient)  
Springfield MA 413 246 6476  
 (street address) (city/town) (state) (phone)

My agent shall have the authority to make all health care decisions for me, including decisions about life-sustaining treatment, subject to change if any limitations have been written below, if I am unable to make health care decisions for myself. My Agent's authority becomes effective if my attending physician determines in writing that I lack the capacity to make or to communicate health care decisions. My agent is then to have the same authority to make health care decisions as I would if I had the capacity to make them EXCEPT (here list the limitations, if any, you wish to place on your AGENT'S authority):

I direct my Agent to make health care decisions based on his/her assessment of my personal wishes. If my personal wishes are unknown, my Agent is to make health care decisions based on his/her assessment of my best interests. Photocopies of this Health Care Proxy shall have the same force and effect as the original.

Note: You should not choose as your health care agent an employee or member of the health care facility in which you are now or expect to be a patient, unless you are related to that person by blood, marriage or adoption.

Signed: Emilio Fusco (COVID-unable to sign) Date: 1/6/2021

Complete only if Principal is physically unable to sign: I have signed the Principal's name above at his/her direction in the presence of the Principal and two witnesses.

Jane Tordell  
 (name)  
119 Belmont St Worcester MA  
 (street address) (city/town) (state)

WITNESS STATEMENT: We, the undersigned, each witnessed the signing of the Health Care Proxy by the Principal or at the direction of the Principal and state that the Principal appears to be at least 18 years of age, of sound mind and under no constraint or undue influence. Neither of us is named as the Health Care Agent or Alternate in this document.

Witness #1: [Signature] (signature) Witness #2: Christina Mullen (signature)

Name (print): Stefania Name (print): Christina Mullen

Address: 119 Belmont St Address: 119 Belmont St  
Worcester, MA 01605 Worcester, MA 01605

**Bureau of Prisons  
Health Services  
Cosign/Review**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Race:	WHITE
Encounter Date:	01/06/2021 14:06			Facility:	DEV

**Cosigned by Shaw, Megan MD/CD on 01/06/2021 16:54.**



**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name: FUSCO, EMILIO	Sex: M Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: D'Addeo, Joseph RN/UR	Facility: DEV
Note Date: 01/07/2021 14:23		Unit: J04

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1 Provider: D'Addeo, Joseph RN/UR

COMMUNITY HOSPITAL REPORT: Memorial Hospital Report

SERVICE: Critical Care

ADMISSION DATE: 12/28/2020

INDICATIONS FOR ADMISSION: confirmed COVID-19 Hypoxia/SOB"

HOSPITAL DAY: 10

CONDITION: worsened acute respiratory failure

INTUBATED: No

COVID TEST: Qualitative NAAT COVID positive 12/21/2020

UPDATES : Inmate remains inpatient with acute hypoxic respiratory failure 2/2 COVID-19. He is A&Ox3, ambulating in room as tolerated, proning in bed as tolerated. He has not been febrile but dose still require HFNC. It has been weaned somewhat to 50L/50%. Sating at 95%. He has completed antibiotics and therapeutics. CT Chest neg for PE, + for b/l infiltrates. Will continue to wean O2 as tolerated. No discharge plans.

ANTICIPATED DISCHARGE: 1/11/2020

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by D'Addeo, Joseph RN/UR on 01/07/2021 14:42

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Cosign/Review**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Race:	WHITE
Encounter Date:	01/07/2021 14:23			Facility:	DEV

**Cosigned by Shaw, Megan MD/CD on 01/08/2021 13:26.**

**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name: FUSCO, EMILIO		Reg #:	02689-748
Date of Birth: 10/09/1968	Sex: M	Race: WHITE	Facility: DEV
Note Date: 01/08/2021 14:19	Provider: D'Addeo, Joseph RN/UR	Unit:	J04

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1      Provider: D'Addeo, Joseph RN/UR

COMMUNITY HOSPITAL REPORT: Memorial Hospital Report

SERVICE: Critical Care

ADMISSION DATE: 12/28/2020

INDICATIONS FOR ADMISSION: confirmed COVID-19 Hypoxia/SOB"

HOSPITAL DAY: 11

CONDITION: acute hypoxic respiratory failure

INTUBATED: No

COVID TEST: Qualitative NAAT COVID positive 12/21/2020

UPDATES : Inmate remains Inpatient with acute hypoxic respiratory failure 2/2 COVID-19. He is A&Ox3, ambulating in room , proning in bed as tolerated. He states he is comfortable with no respiratory distress, but is still requiring high flow 80% O2 at 40 L/min to maintain 96% O2 sats. No fever, no abnormal labs. All therapeutics completed. Will continue to wean O2 as tolerated. No discharge plans at this time.

ANTICIPATED DISCHARGE: 1/11/2020

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by D'Addeo, Joseph RN/UR on 01/08/2021 14:23

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Cosign/Review**

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Inmate Name:	FUSCO, EMILIO	Reg #:	02689-748
Date of Birth:	10/09/1968	Sex:	M
Encounter Date:	01/08/2021 14:19	Provider:	D'Addeo, Joseph RN/UR
		Race:	WHITE
		Facility:	DEV

---

**Cosigned by Lund, L. D.O. on 01/11/2021 13:12.**

**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name: FUSCO, EMILIO		Reg #: 02689-748
Date of Birth: 10/09/1968	Sex: M Race: WHITE	Facility: DEV
Note Date: 01/11/2021 13:37	Provider: D'Addeo, Joseph RN/UR	Unit: J04

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1      Provider: D'Addeo, Joseph RN/UR

COMMUNITY HOSPITAL REPORT: Memorial Hospital Report

SERVICE: Internal Medicine/ med surg

ADMISSION DATE: 12/28/2020

INDICATIONS FOR ADMISSION: confirmed COVID-19 Hypoxia/SOB

HOSPITAL DAY: 14

CONDITION: acute hypoxic respiratory failure

INTUBATED: No

COVID TEST: Qualitative NAAT COVID positive 12/21/2020

UPDATES : Inmate remains inpatient with acute hypoxic respiratory failure 2/2 COVID-19. He is A&Ox3, ambulating in room , no c/o SOB or pain. His oxygen requirements have been weaned down to 4 lpm via n/c. He is tachycardic to 120's with any activity. Plan to remain on telemetry and continue to wean O2 as tolerated. No discharge plans at this time.

ANTICIPATED DISCHARGE: 1/13/2020

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by D'Addeo, Joseph RN/UR on 01/11/2021 13:42

Requested to be cosigned by Shaw, Megan MD/CD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name: FUSCO, EMILIO		Reg #:	02689-748
Date of Birth: 10/09/1968	Sex: M Race: WHITE	Facility:	DEV
Note Date: 01/12/2021 13:39	Provider: D'Addeo, Joseph RN/UR	Unit:	J04

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1      Provider: D'Addeo, Joseph RN/UR

COMMUNITY HOSPITAL REPORT: Memorial Hospital Report

SERVICE: Internal Medicine/ med surg

ADMISSION DATE: 12/28/2020

INDICATIONS FOR ADMISSION: confirmed COVID-19 Hypoxia/SOB

HOSPITAL DAY: 15

CONDITION: acute hypoxic respiratory failure

INTUBATED: No

COVID TEST: Qualitative NAAT COVID positive 12/21/2020

UPDATES : Inmate remains inpatient with acute hypoxic respiratory failure 2/2 COVID-19. He is A&Ox3, ambulating in room. T- 98.1, HR- 84, RR- 20, BP- 125/76, SpO2- 97% on 4 lpm NC. He continues to have some tachycardia and dyspnea on exertion, but remains hemodynamically stable. He has completed all antibiotics and therapeutics. Inmate is stable to return to Devens and will be housed on P03 on post hospitalization quarantine and will continue supplemental O2 as needed.

ANTICIPATED DISCHARGE: 1/12/2020

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by D'Addeo, Joseph RN/UR on 01/12/2021 14:03

Requested to be cosigned by Ruze, P. MD.

Cosign documentation will be displayed on the following page.



**Bureau of Prisons  
Health Services  
Cosign/Review**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Race:	WHITE
Encounter Date:	01/12/2021 13:39			Facility:	DEV

**Cosigned by Ruze, P. MD on 01/12/2021 14:21.**

**Bureau of Prisons  
Health Services  
Cosign/Review**

Inmate Name:	FUSCO, EMILIO	Sex:	M	Reg #:	02689-748
Date of Birth:	10/09/1968	Provider:	D'Addeo, Joseph RN/UR	Race:	WHITE
Encounter Date:	01/11/2021 13:37			Facility:	DEV

**Cosigned by Shaw, Megan MD/CD on 01/11/2021 14:40.**

**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name:	FUSCO, EMILIO	Reg #:	02689-748
Date of Birth:	10/09/1968	Sex:	M Race: WHITE
Note Date:	01/12/2021 09:11	Provider:	Lund, L. D.O.
		Facility:	DEV
		Unit:	J04

Admin Note - Community Hospital Report encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1 Provider: Lund, L. D.O.

U Mass called, wanting to release Mr. Fusco. His O2 sat is 93-95% on 4L O2. When he's up to the bathroom his pulse increases to 110-120 and O2 drops to 89-90% , so he probably needs 6 L when up. Feels fine when up. No rehab there, as he's been restrained to bed, but he seems back to near normal energy. Hx WPW, ablated in 2008. BMP normal 1/11/21, CBC normal 1/4/21 and not checked since.

Discharging doc does not anticipate Mr. Fusco needing more than 6 L in motion, 4L when at rest as he continues to recover.

UR aware and looking for a room with wall O2

**Copay Required:**No

**Cosign Required:** No

**Telephone/Verbal Order:** No

Completed by Lund, L. D.O. on 01/12/2021 09:16

UMass Memorial Medical Center- Memorial Campus 6 South Unit  
 119 Belmont Street  
 Worcester MA 01605  
 Phone: 508-334-6395  
 Fax:

Date: Jan 12, 2021

Patient: Emilio Fusco  
 333 South Street  
 Shrewsbury MA 01545  
 Phone: 508-793-1202

MRN: 801291691  
 DOB: 10/9/1968

Sex: M  
 Height: 175.3 cm (5' 9")  
 Weight: 101.1 kg (222 lb 14.2 oz)

INSURANCE	PAYOR	PLAN	GROUP #	SUBSCRIBER ID
Primary:	CORRECTIONAL CARE	1100302		02689-748

**Durable Medical Equipment - Negative Pressure Wound Care & Supplies** (Order ID: 219249374)

**Diagnosis:** COVID-19 (U07.1)  
 Acute respiratory failure with hypoxia (CMS/HCC) (J96.01)  
 Multifocal pneumonia (J18.9)  
 ARDS (adult respiratory distress syndrome) (CMS/HCC) (J80)

**Quantity:** 1

**Comments:** Please dispense the equipment ordered. This patient cannot safely ambulate without this equipment and/or this equipment is essential to the patients healing and rehabilitative process.

If this is a nebulizer order it is intended for home use.

By Signing this order, the Authorizing Provider is attesting that they have completed a face-to-face evaluation of the patient, to determine their need for this equipment.

The face-to-face evaluation was completed by: Jason W. Numbers, MD

*DME: Adult*

*DME item: Oxygen*

*O2 liter flow for discharge: 4*

*Pulse Ox @ rest on O2: 93*

*Pulse Ox @ rest off O2: 80*

*Pulse Ox with ambulation on O2: 90*

*Pulse Ox with ambulation off O2: 75*

*Nocturnal (# of l/min): 4*

*Length needed (99 months = lifetime): 99*

*Start Date of the order: 1/12/2021*

*The face to face evaluation was performed on: 1/12/2021*

Signature: \_\_\_\_\_

Ordered by: Jason W. Numbers, MD

Electronically Signed by: Jason W. Numbers, MD  
 (NPI: 1669609392)

01/19/2021 7:58:30 PM -0500 UMASS MEMORIAL1

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00089-448

Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12117374577

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**ED Provider Notes by Neil McCormack, MD at 1/19/2021 12:32 PM**

Author: Neil McCormack, MD

Service: Emergency Medicine

Author Type: Physician

Filed: 1/19/2021 7:57 PM

Date of Service: 1/19/2021 12:32 PM

Status: Signed

Editor: Neil McCormack, MD (Physician)

**HPI:** 52 y/o male with recent admission for COVID with ARDS and PNA during that time presents to the ED c/o worsening hypoxia from Fort Devins. The patient was diagnosed with COVID on 12/21 and discharged on 1/12. During the patient's admission, he went through full treatment including remdesivir and dexamethasone. Since discharge, he has been on 4L NC O2. The patient c/o worsening oxygen saturation, with low 80s and reported lowest of 75% this morning. He states that moving increases his SOB, stating he "feels like I just exercised". He otherwise denies leg swelling, cough, fever, or new sick contacts. Of note he only has desaturations when attempting demanding physical activity he says. He was reportedly supposed to follow up with a "specialist" on discharge but has not yet and is not sure which specialist this would have been though thinks it was for pulmonary.

**Chief Complaint**

Patient presents with

- SOB

History provided by: **Patient**Language interpreter used: **No****SOB**Severity: **Moderate**Onset quality: **Gradual**Duration: **Since this morning.**Timing: **Constant**Progression: **Worsening**Chronicity: **New**Context comment: **Recent admit w/ COVID and ARDS**Relieved by: **None tried**Worsened by: **Movement**Ineffective treatments: **None tried**Associated symptoms: **no abdominal pain, no chest pain, no cough, no fever, no headaches, no neck pain, no rash, no sore throat and no vomiting****Patient History**

History reviewed. No pertinent past medical history.

**Past Surgical History:**

Procedure

Laterality

Date

- **HEMORRHOID SURGERY**

No family history on file.

**Social History****Tobacco Use**

- **Smoking status:** Former Smoker
- Packs/day:** 1.00
- Years:** 30.00

Fusco, Emilio (MRN: 801291691) Printed by [MCCORMAN] at 1/19/21 7:57 PM

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12117374577  
 ED Provider Notes by Neil McCormack, MD at 1/19/2021 12:32 PM (continued)

Pack years: 30.00  
 Types: Cigarettes  
 Start date: 12/28/1970  
 Quit date: 12/28/2010  
 Years since quitting: 10.0  
 • Smokeless tobacco: Former User  
 Quit date: 12/29/2010  
 Substance Use Topics  
 • Alcohol use: Not Currently  
 Frequency: Never  
 • Drug use: Not Currently

### Review of Systems

#### Review of Systems

Constitutional: Negative for chills and fever.  
 HENT: Negative for rhinorrhea and sore throat.  
 Eyes: Negative for pain.  
 Respiratory: Positive for shortness of breath. Negative for cough.  
 Cardiovascular: Negative for chest pain and leg swelling.  
 Gastrointestinal: Negative for abdominal pain and vomiting.  
 Genitourinary: Negative for dysuria and hematuria.  
 Musculoskeletal: Negative for back pain and neck pain.  
 Skin: Negative for rash.  
 Neurological: Negative for headaches.

### Physical Exam

Vitals:	01/19/21 1630	01/19/21 1815	01/19/21 1830	01/19/21 1845
BP:	108/73	105/77	100/74	
BP Location:	Right arm	Right arm	Right arm	
Patient	Lying	Sitting	Sitting	
Position:				
Pulse:	86	89	83	84
Resp:	19	(I) 32	(I) 26	(I) 29
Temp:				36.6 °C (97.8 °F)
TempSrc:				Oral
SpO2:	94%	93%	94%	94%
Weight:				

### Physical Exam

Vitals signs and nursing note reviewed.

#### Constitutional:

General: He is not in acute distress.

Appearance: He is well-developed.

Fusco, Emilio (MRN: 801291691) Printed by [MCCORMAN] at 1/19/21 7:57 PM

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12117374577

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**ED Provider Notes by Neil McCormack, MD at 1/19/2021 12:32 PM (continued)****Comments: Speaking in full sentences.****HENT:**

Head: Normocephalic and atraumatic.

Mouth/Throat:

Mouth: Mucous membranes are moist.

**Eyes:**

Conjunctiva/sclera: Conjunctivae normal.

Pupils: Pupils are equal, round, and reactive to light.

**Neck:**

Musculoskeletal: Normal range of motion.

**Cardiovascular:**

Rate and Rhythm: Normal rate and regular rhythm.

**Comments: No peripheral edema. Slight tachycardia.****Pulmonary:**

Effort: Pulmonary effort is normal. No respiratory distress.

Breath sounds: Examination of the right-lower field reveals decreased breath sounds. Decreased breath sounds present. No wheezing, rhonchi or rales.

**Comments: Decreased breath sounds in right lower middle lobes.****Abdominal:**

Palpations: Abdomen is soft.

Tenderness: There is no abdominal tenderness.

**Musculoskeletal:** Normal range of motion.

General: No deformity.

**Skin:**

General: Skin is warm and dry.

**Neurological:**

General: No focal deficit present.

Mental Status: He is alert and oriented to person, place, and time.

**MEDICAL DECISION MAKING:**

**Assessment and Plan:** 52 y/o history of COVID and ARDS at baseline 4 L O2 now with worsening shortness of breath and desaturation despite on O2. Sent from Fort Devens for evaluation. Pulmonary vs plural effusion vs PE vs cardiac vs other. Labs ordered; BMP, dimer, CXR. Dispo pending.

**Data Review:**

The following were independently reviewed: ECG

**EKG Interpretation:****Rate:** 76 normal **Rhythm:** sinus rhythm,

EKG reviewed in the absence of a cardiologist

**Comments:** QTc 436**Labs Reviewed****BLOOD GAS, VENOUS - Abnormal**

Result	Value
pH, Venous	7.42 (*)
pCO2, Venous	43.0

Fusco, Emilio (MRN: 801291691) Printed by [MCCORMAN] at 1/19/21 7:57 PM

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12117374577  
 ED Provider Notes by Neil McCormack, MD at 1/19/2021 12:32 PM (continued)

pO2, Ven 49.0 (\*)  
 HCO3, Venous 28 (\*)  
 O2 Sat, Venous 84.5 (\*)  
 Base Excess, Ven 2.9

## CBC AUTO DIFFERENTIAL

WBC 6.7  
 RBC 4.66  
 Hemoglobin 15.0  
 Hematocrit 42.3  
 MCV 90.7  
 MCH 32.1  
 MCHC 35.4  
 RDW 14.0  
 Platelets 212  
 MPV 7.7  
 Neutrophil % 70.1  
 Lymphocyte % 21.2  
 Monocyte % 6.9  
 Eosinophil % 1.0  
 Basophil % 0.8  
 Neutrophil # 4.70  
 Lymphocyte # 1.4  
 Monocyte # 0.5  
 Eosinophil # 0.1  
 Basophil # 0.1  
 Smear Review? No

## COMPREHENSIVE METABOLIC PANEL

MAGNESIUM

TROPONIN I

BRAIN NATRIURETIC PEPTIDE

D-DIMER, QUANTITATIVE

X-Ray Chest 1 View (Results Pending)

Medications - No data to display

ED Course as of Jan 19 2021

Tue Jan 19, 2021

1733 CT no change significantly from prior Cts and patient has been sitting well at above 90% on 2L (his baseline has been 4L at Fort Devens). Spoke with Mike Halloran, RN at health services at Fort Devens reporting that patient is stable to return if has access to O2 and he informs me that patient is in a medical unit that has 24/7 wall O2 availability. Will need to see Pulmonary if no improvement over course of several months and RN Halloran aware.

[NM]  
 1358 Patient has been sitting well during his stay at this time. Dimer positive will plan for repeat CT-PE. CXR showing report of worsening bilateral opacities as a possible cause for his

Fusco, Emilio (MRN: 801291691) Printed by [MCCORMAN] at 1/19/21 7:57 PM

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Fusco, Emilio (MRN: 801291691) DOB: 10/09/1968 CSN:12117374577

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**ED Provider Notes by Neil McCormack, MD at 1/19/2021 12:32 PM (continued)**

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shortness of breath symptoms. CT pending.

Disposition pending workup

[NM]

**ED Course User Index**

[NM] Neil McCormack, MD

Written by Nicole Ouellette, acting as scribe for Neil McCormack, MD. Electronically signed by Nicole Ouellette at 12:32 PM on 1/19/2021.

Attending to Scribe - Chart documented by scribe in my presence. Documentation accepted as noted in record. Work performed by me and documented by scribe. Any changes or disagreements are noted in record.

*Emilio Fusco DOB: 10/9/1968 MRN: 801291691 CSN: 12117374577*

Nicole Ouellette

01/19/21 1243

Neil McCormack, MD

01/19/21 1957

**Bureau of Prisons  
Health Services  
Clinical Encounter**

Inmate Name: FUSCO, EMILIO  
Date of Birth: 10/09/1968  
Encounter Date: 01/19/2021 10:14

Sex: M Race: WHITE  
Provider: Riley, E. NP-C

Reg #: 02689-748  
Facility: DEV  
Unit: P03

Mid Level Provider - Evaluation encounter performed at Housing Unit.

**SUBJECTIVE:**

COMPLAINT 1 Provider: Riley, E. NP-C

Chief Complaint: GENERAL

Subjective: 52 w/ a history of WPW, s/p ablation in 2008, s/p right inguinal hernia repair and anemia. He was confirmed with COVID-19 on 12/21/20. He was sent to hospital on 12/28/2020 for a decrease in his oxygen saturation. He was admitted with Covid pneumonia and hypoxia. He was given dexamethasone remdesivir and antibiotics, CT Chest neg for PE, + for b/l infiltrates during his stay.

He was evaluated today for routine isolation examination in housing unit where his oxygen saturation was noted to be 84% on 4lpm of o2 via NC. He is visibly SOB when speaking full sentences. He states he started feeling like his breathing was getting worse yesterday. He denies fever, chill, or chest pain.

Pain: No

**ROS:**

**General**

**Constitutional Symptoms**

No: Chills, Fatigue, Fever, Weakness

**Pulmonary**

**Respiratory System**

Yes: Shortness of breath (Triggers?: daily)

**OBJECTIVE:**

**Temperature:**

Date	Time	Fahrenheit	Celsius	Location	Provider
01/19/2021	10:14 DEV	97.0	36.1		Riley, E. NP-C

**Pulse:**

Date	Time	Rate Per Minute	Location	Rhythm	Provider
01/19/2021	10:14 DEV	107			Riley, E. NP-C

**Respirations:**

Date	Time	Rate Per Minute	Provider
01/19/2021	10:14 DEV	20	Riley, E. NP-C

**Blood Pressure:**

Date	Time	Value	Location	Position	Cuff Size	Provider
01/19/2021	10:14 DEV	130/90				Riley, E. NP-C

**SaO2:**

Date	Time	Value(%)	Air	Provider
01/19/2021	10:14 DEV	84	Oxygen 4 L	Riley, E. NP-C

**Exam:**

Inmate Name: FUSCO, EMILIO  
 Date of Birth: 10/09/1968  
 Encounter Date: 01/19/2021 10:14

Sex: M Race: WHITE  
 Provider: Riley, E. NP-C

Reg #: 02689-748  
 Facility: DEV  
 Unit: P03

## General

### Affect

Yes: Pleasant, Cooperative

### Appearance

Yes: Appears Well, Alert and Oriented x 3

No: Appears in Pain, Writhing in Pain

## ASSESSMENT:

Unspecified abnormalities of breathing, R069 - Current - SOB

## PLAN:

### New Consultation Requests:

<u>Consultation/Procedure</u>	<u>Target Date</u>	<u>Scheduled Target Date</u>	<u>Priority</u>	<u>Translator</u>	<u>Language</u>
Emergency Room	01/19/2021	01/19/2021	Emergent	No	

Subtype:

Emergency Room

Reason for Request:

52 w/ a history of WPW, s/p ablation in 2008, s/p right inguinal hernia repair and anemia. He was confirmed with COVID-19 on 12/21/20. He was sent to hospital on 12/28/2020 for a decrease in his oxygen saturation. He was admitted with Covid pneumonia and hypoxia. He was given dexamethasone remdesivir and antibiotics, CT Chest neg for PE, + for b/l infiltrates during his stay.

He was evaluated today for routine isolation examination in housing unit where his oxygen saturation was noted to be 84% on 4lpm of o2 via NC. He is visibly SOB when speaking full sentences. He states he started feeling like his breathing was getting worse yesterday. He denies fever, chill, or chest pain

## Disposition:

Transfer to Local Hospital

## Other:

Patient transferred to Umass Hospital for oxygen saturation of 84% on 4lpm via nc of oxygen. He is visibly SOB. Report given to care connect line. Transferred via ALS ambulance.

## Patient Education Topics:

<u>Date Initiated</u>	<u>Format</u>	<u>Handout/Topic</u>	<u>Provider</u>	<u>Outcome</u>
01/19/2021	Counseling	Plan of Care	Riley, E.	Verbalizes Understanding

Copay Required: No

Cosign Required: Yes

Telephone/Verbal Order: No

Completed by Riley, E. NP-C on 01/19/2021 10:26

Requested to be cosigned by Fennelly, Jeffrey MD.

Cosign documentation will be displayed on the following page.

**Bureau of Prisons  
Health Services  
Clinical Encounter**

Inmate Name: FUSCO, EMILIO  
Date of Birth: 10/09/1968  
Encounter Date: 01/29/2021 10:21

Sex: M Race: WHITE  
Provider: Riley, E. NP-C

Reg #: 02689-748  
Facility: DEV  
Unit: P03

Mid Level Provider - Follow up Visit encounter performed at Housing Unit.

**SUBJECTIVE:**

COMPLAINT 1 Provider: Riley, E. NP-C

Chief Complaint: GENERAL

Subjective: Patient requesting summary of his recent medical problems.

52 w/ a history of WPW (Wolff-Parkinson-White), s/p ablation in 2008, s/p right inguinal hernia repair and anemia. He was confirmed with COVID-19 on 12/21/20. He was sent to hospital on 12/28/2020 for a decrease in his oxygen saturation. He was admitted with Covid pneumonia and hypoxia. He was given dexamethasone remdesivir and antibiotics, CT Chest neg for PE, + for b/l infiltrates during his stay. He later returned to Devens on 1/12/2021 where he currently continues on oxygen between 4-6 lpm via NC.

On 1/19/2021 Patient's oxygen was checked and he was his oxygen saturation was noted to be 84% on 4lpm of o2 via NC. He was visibly SOB when speaking full sentences and was sent back to the hospital for evaluation. His D dimer was positive so a repeat so a repeat CT scan of the chest was ordered to rule out pulmonary embolism. CT scan of chest showed no significant difference from prior scan. Patient was discharged back to Devens with recommendations to continue oxygen and follow up with pulmonologist in 3 months.

Pain: No

**OBJECTIVE:**

**ASSESSMENT:**

Confirmed case COVID-19, U07.1 - Resolved

**PLAN:**

**Other:**

Will instruct patient he can request copy of his medical records for the information he needs.

**Patient Education Topics:**

<u>Date Initiated</u>	<u>Format</u>	<u>Handout/Topic</u>	<u>Provider</u>	<u>Outcome</u>
01/29/2021	Counseling	Plan of Care	Riley, E.	Verbalizes Understanding

Copay Required: No

Cosign Required: Yes

Telephone/Verbal Order: No

Completed by Riley, E. NP-C on 01/29/2021 10:37

Requested to be cosigned by Murray, Scott MD.

Cosign documentation will be displayed on the following page.



**FMC Devens DEV**

Patient:	FUSCO, EMILIO (Male)	DOB:	10/09/68
Register#:	02689-748	Age:	52
Date:	05/26/21 11:44	Status:	OP
Slice count:	2		
History:	Post Covid Interstitial and alveolar opacities, follow up study		
Priors:			
Exams:	FILM CXR 2 VIEWS		
Referring Phy:			
Ordering Phy:			
Ordering Phy #:			
Accession Numbers:	202#BOP00259406		

**Final Report**

**Exam:** FILM CXR

**Chest PA and lateral views**

**INDICATION:** Post covid interstitial and alveolar opacities, follow-up study

**COMPARISON:** Chest exam 2/22/21

**FINDINGS:**

There is mild low lung volumes.

Improving bilateral interstitial and alveolar opacities since prior examination in the mid to lower lung field. There is some mild residual opacity remaining in the medial right lung base. Remaining lungs are clear.

The cardiomedastinal silhouette is within normal limits. No pleural effusions. Bony elements are within normal limits for age. No acute osseous abnormality.

**IMPRESSION:**

1. Marked improvement of bilateral infiltrates in the mid to lower lung field with small residual remaining in the medial right lung base which represents a mild residual infiltrate versus subsegmental atelectasis/scarring. Continued follow-up suggested.

2. Remaining lungs are clear.

3. Heart size normal.

Radiologist: Farhad Khorashadi, MD  
Study ready at 11:44 and initial results transmitted at 13:08



**Bureau of Prisons  
Health Services  
Clinical Encounter - Administrative Note**

Inmate Name: FUSCO, EMILIO		Reg #: 02689-748
Date of Birth: 10/09/1968	Sex: M Race: WHITE	Facility: DEV
Note Date: 11/10/2020 16:09	Provider: Lund, L. D.O.	Unit: J04

Review Note - Document Review encounter performed at Health Services.

**Administrative Notes:**

ADMINISTRATIVE NOTE 1 Provider: Lund, L. D.O.

Moderate to severe OSA on oximetry. CPAP recommended, starting at 12 cm. consult written.

**New Consultation Requests:**

<u>Consultation/Procedure</u>	<u>Target Date</u>	<u>Scheduled Target Date</u>	<u>Priority</u>	<u>Translator</u>	<u>Language</u>
Respiratory Therapy	12/10/2020	12/10/2020	Routine	No	
Subtype:					
CPAP/BIPAP in house					
Reason for Request:					
Moderate to severe OSA on oximetry. CPAP recommended, starting at 12 cm					
Provisional Diagnosis:					
OSA					

Copay Required: No

Cosign Required: No

Telephone/Verbal Order: No

Completed by Lund, L. D.O. on 11/10/2020 16:10

**RESMED****ApneaLink - Report of 10/28/2020 11:35 AM**

Treating physician

Referral to

**Patient data**

First name: Emilio  
Last Name: Fusco  
Street:  
City, ST, Zip:  
Phone:

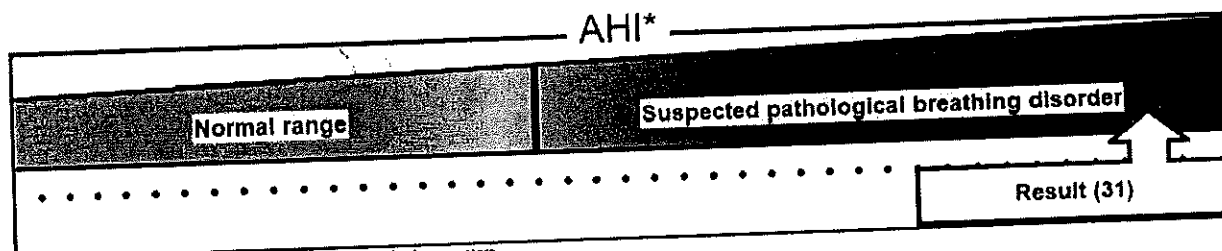
Patient ID: 02689-748  
DOB: 10/9/1968  
Height: 5 ft 11 in  
Weight: 218.00 lbs  
BMI: 30.4 kg/m<sup>2</sup>

**Recording**

Date: 10/25/2020  
Start: 11:27 PM  
End: 5:59 AM  
Duration: 6 h 32 min

**Evaluation**

Start: 11:37 PM  
End: 5:57 AM  
Duration: 3 h 26 min



\* See Clinical Guide for abbreviations and ResMed standard parameters

**Analysis** (Flow evaluation period: 3 h 26 min)

Indices	Normal	Result
AHI*: 30.8	< 5 / h	Average breaths per minute (bpm): 15.79
RI*: 33	< 5	Breaths: 3261
Apnea index: 15.1	< 5 / h	Apneas: 2 (4%)
UAI: 0.6		Unclassified apneas: 42 (81%)
OAI: 12.2		Obstructive apneas: 7 (13%)
CAI: 2		Central apneas: 1 (2%)
MAI: 0.3		Mixed apneas: 54
Hypopnea index: 15.7	< 5 / h	Hypopneas: 883
% Flow lim. Br. without Sn (FL): 27	< Approx. 60	Flow lim. Br. without Sn (FL): 14
% Flow lim. Br. with Sn (FS): 0	< Approx. 40	Flow lim. Br. with Sn (FS): 259
		Snoring events:

Proportion of probable CS epochs: 0 0%

Analysis status: Analyzed automatically (Hypopneas based on flow only)

**Analysis parameters used (Default)**

Apnea [20%; 10s; 80s; 1.0s; 20%; 60%; 8%]; Hypopnea [50%; 10s; 100s; 1.0s]; Snoring [0.0%; 0.3s; 3.5s; 0.5s]; CSR [0.60]

**Comments**

Flow channel is the only reliable in this study with some periods of functional effort channel; It was enough to qualify patient for having moderate to severe OSA. Recommend: Initiate CPAP. Try it at 12 cm H<sub>2</sub>O with clinical monitoring in 2 weeks at pulmonary clinic or by respiration.

*(I. Ketsler)* 11/10/2020

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**EXHIBIT**

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**D**

**Bureau of Prisons  
Health Services  
Medication Summary  
Historical**

Complex: DEV--DEVENS FMC

Begin Date: 12/15/2021

End Date: 01/10/2022

Inmate: FUSCO, EMILIO

Reg #: 02689-748

Quarter: J01-130L

Medications listed reflect prescribed medications from the begin date to end date on this report.

Allergies: Denied

**Active Prescriptions**

Albuterol Inhaler HFA (8.5 GM) 90 MCG/ACT

Inhale 2 puffs by mouth every four hours AS NEEDED for shortness of breath or wheezing

Rx#: 565792-DEV Doctor: Lund, L. D.O.

Start: 12/07/21 Exp: 06/05/22

Pharmacy Dispensings: 51 GM in 109 days

Calcium Polycarbophil 625 MG Tab

Take one tablet (625 MG) by mouth twice daily for constipation while on iron- Take with a glassful of water

Rx#: 559228-DEV Doctor: Murray, Scott (MAT) MD

Start: 09/20/21 Exp: 03/19/22

Pharmacy Dispensings: 360 TAB in 180 days

Docusate Sodium 100 MG Cap

Take one tablet (100 MG) by mouth twice daily AS NEEDED for constipation - Take with a glassful of water

Rx#: 565793-DEV Doctor: Lund, L. D.O.

Start: 12/07/21 Exp: 06/05/22

Pharmacy Dispensings: 180 CAP in 109 days

Lisinopril 10 MG Tab

Take one tablet (10 MG) by mouth each day

Rx#: 565794-DEV Doctor: Lund, L. D.O.

Start: 12/07/21 Exp: 06/05/22

Pharmacy Dispensings: 120 TAB in 109 days

Mometasone Furoate Inhal 220 MCG/Inh [ 60 doses]

Activate inhaler and Inhale one puff by mouth twice daily - \*\*rinse mouth after use\*\*

Rx#: 565795-DEV Doctor: Lund, L. D.O.

Start: 12/07/21 Exp: 06/05/22

Pharmacy Dispensings: 6 ea in 109 days

Omeprazole 20 MG Cap

Take one capsule (20 MG) by mouth each day

Rx#: 565796-DEV Doctor: Lund, L. D.O.

Start: 12/07/21 Exp: 06/05/22

Pharmacy Dispensings: 90 CAP in 109 days

**Bureau of Prisons  
Health Services  
Clinical Encounter**

Inmate Name: FUSCO, EMILIO	Sex: M Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: Riley, E. NP-C	Facility: DEV
Encounter Date: 12/20/2021 09:59		Unit: P03

Mid Level Provider - Follow up Visit encounter performed at Health Services.

**SUBJECTIVE:**

COMPLAINT 1 Provider: Riley, E. NP-C

Chief Complaint: GENERAL

Subjective: 53 yo male, care level 1, PRD 2032, s/p R inguinal hernia repair, cardiac ablation (2008) for WPW, internal hemorrhoids (c-scope 2017), colon polyps, constipation, sleep apnea on CPAP, s/p severe COVID 19 infection requiring hospitalization in 12/2020.

He is evaluated today for follow up regarding his blood pressure. His Lisinopril was increased from 5mg daily to 10 mg daily a couple weeks ago. He reports doing well on this medication with no adverse side effects. Blood pressure today is 132/80. He denies headache, weakness, dizziness, cough or fatigue.

Pain: No

**ROS:**

**General**

**Constitutional Symptoms**

No: Chills, Fatigue, Fever, Weakness

**Cardiovascular**

**General**

Yes: Within Normal Limits

**Pulmonary**

**Respiratory System**

Yes: Within Normal Limits

**OBJECTIVE:**

**Pulse:**

<u>Date</u>	<u>Time</u>	<u>Rate Per Minute</u>	<u>Location</u>	<u>Rhythm</u>	<u>Provider</u>
12/20/2021	10:02 DEV	84			Riley, E. NP-C

**Blood Pressure:**

<u>Date</u>	<u>Time</u>	<u>Value</u>	<u>Location</u>	<u>Position</u>	<u>Cuff Size</u>	<u>Provider</u>
12/20/2021	09:59 DEV	134/80				Riley, E. NP-C

**Exam:**

**General**

**Affect**

Yes: Pleasant, Cooperative

**Appearance**

Yes: Appears Well, Alert and Oriented x 3

No: Appears in Pain, Writhing in Pain

**Pulmonary**

**Auscultation**

Inmate Name: FUSCO, EMILIO	Sex: M Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: Riley, E. NP-C	Facility: DEV
Encounter Date: 12/20/2021 09:59		Unit: P03

Yes: Clear to Auscultation

**Cardiovascular**

**Auscultation**

Yes: Regular Rate and Rhythm (RRR), Normal S1 and S2

**ASSESSMENT:**

Essential (primary) hypertension, I10 - Current

**PLAN:**

**Disposition:**

Follow-up at Sick Call as Needed

**Other:**

HTN: Blood pressure stable today. No further medication changes at this time. Follow up as needed

**Patient Education Topics:**

<u>Date Initiated</u>	<u>Format</u>	<u>Handout/Topic</u>	<u>Provider</u>	<u>Outcome</u>
12/20/2021	Counseling	Plan of Care	Riley, E.	Verbalizes Understanding

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by Riley, E. NP-C on 12/20/2021 10:05

Requested to be cosigned by Murray, Scott (MAT) MD.

Cosign documentation will be displayed on the following page.

Inmate Name: FUSCO, EMILIO	Sex: M	Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: Churchville, Lawrence MD	Facility: DEV	Unit: P03
Encounter Date: 05/28/2021 10:53			

<u>Date</u>	<u>Time</u>	<u>Value</u>	<u>Location</u>	<u>Position</u>	<u>Cuff Size</u>	<u>Provider</u>
05/28/2021	10:57	DEV 130/80	Left Arm	Sitting	Adult-large	Churchville, Lawrence MD

**SaO2:**

<u>Date</u>	<u>Time</u>	<u>Value(%)</u>	<u>Air</u>	<u>Provider</u>
05/28/2021	10:57	DEV 99	Room Air	Churchville, Lawrence MD

**Exam:****General****Affect**

Yes: Pleasant, Cooperative

**Appearance**

Yes: Appears Well, Oriented to person, place and time

**Pulmonary****Observation/Inspection**

Yes: Within Normal Limits

**Auscultation**

Yes: Clear to Auscultation

**ASSESSMENT:**Unspecified abnormalities of breathing, R069 - Current - *Dyspnea Post Covid-19 pneumonia***PLAN:****New Medication Orders:**

<u>Rx#</u>	<u>Medication</u>	<u>Order Date</u>
	predniSONE Tablet	05/28/2021 10:53

**Prescriber Order:** Orally(1) 40 mg each morning x 5 day(s) Pill Line Only -- After food \*\*\* (2) 30 mg each morning x 2 day(s) Pill Line Only -- \*\*\* (3) 20 mg each morning x 2 day(s) Pill Line Only -- \*\*\* (4) 10 mg each morning x 2 day(s) Pill Line Only -- \*\*\* (5) 5 mg each morning x 2 day(s) Pill Line Only -- Then discontinue. Do not renew

Indication: Unspecified abnormalities of breathing

**Disposition:**

Follow-up at Sick Call as Needed

Follow-up at Chronic Care Clinic as Needed

**Other:**

Post Covid-19 pneumonia: Plan pulse course of prednisone

**Patient Education Topics:**

<u>Date Initiated</u>	<u>Format</u>	<u>Handout/Topic</u>	<u>Provider</u>	<u>Outcome</u>
05/28/2021	Counseling	Compliance - Treatment	Churchville, Lawrence	Verbalizes Understanding

Coplay Required: No

Cosign Required: No

Telephone/Verbal Order: No

Completed by Churchville, Lawrence MD on 05/28/2021 11:07



**Bureau of Prisons  
Health Services  
Clinical Encounter**

Inmate Name: FUSCO, EMILIO	Sex: M Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: Riley, E. NP-C	Facility: DEV
Encounter Date: 11/01/2021 13:30		Unit: P03

Mid Level Provider - Follow up Visit encounter performed at Health Services.

**SUBJECTIVE:**

COMPLAINT 1 Provider: Riley, E. NP-C

Chief Complaint: GENERAL

Subjective: 53 yo male, care level 1, PRD 2032, s/p R inguinal hernia repair, cardiac ablation (2008) for WPW, internal hemorrhoids (c-scope 2017), colon polyps, constipation, sleep apnea on CPAP, s/p severe COVID 19 infection requiring hospitalization in 12/2020.

He is evaluated today for follow up regarding his blood pressure. His blood pressures have been consistently elevated for the past couple months. BP today 148/88. He currently is not on any BP medications. He is not experiencing any nausea, vomiting, chest pain or weakness.

Pain: No

**ROS:**

**General**

**Constitutional Symptoms**

No: Chills, Fever

**Cardiovascular**

**General**

Yes: Within Normal Limits

**Pulmonary**

**Respiratory System**

Yes: Within Normal Limits

**OBJECTIVE:**

**Temperature:**

<u>Date</u>	<u>Time</u>	<u>Fahrenheit</u>	<u>Celsius</u>	<u>Location</u>	<u>Provider</u>
11/01/2021	12:57 DEV	98.1	36.7		Christian, Yazmin RN
10/25/2021	12:45 DEV	97.6	36.4		Christian, Yazmin RN
10/18/2021	12:52 DEV	97.9	36.6		Christian, Yazmin RN

**Pulse:**

<u>Date</u>	<u>Time</u>	<u>Rate Per Minute</u>	<u>Location</u>	<u>Rhythm</u>	<u>Provider</u>
11/01/2021	12:57 DEV	81			Christian, Yazmin RN
10/25/2021	12:45 DEV	90			Christian, Yazmin RN
10/18/2021	12:52 DEV	91			Christian, Yazmin RN

**Respirations:**

<u>Date</u>	<u>Time</u>	<u>Rate Per Minute</u>	<u>Provider</u>
11/01/2021	12:57 DEV	16	Christian, Yazmin RN
10/25/2021	12:45 DEV	14	Christian, Yazmin RN

Inmate Name: FUSCO, EMILIO  
 Date of Birth: 10/09/1968  
 Encounter Date: 11/01/2021 13:30

Sex: M Race: WHITE  
 Provider: Riley, E. NP-C

Reg #: 02689-748  
 Facility: DEV  
 Unit: P03

Date	Time	Rate Per Minute	Provider
10/18/2021	12:52	DEV	15 Christian, Yazmin RN

**Blood Pressure:**

Date	Time	Value	Location	Position	Cuff Size	Provider
11/01/2021	13:30	DEV	148/88			Riley, E. NP-C
11/01/2021	12:57	DEV	128/88			Christian, Yazmin RN
10/25/2021	12:45	DEV	155/102			Christian, Yazmin RN
10/18/2021	12:52	DEV	158/103			Christian, Yazmin RN

**SaO2:**

Date	Time	Value(%)	Air	Provider
11/01/2021	12:57	DEV	98 Room Air	Christian, Yazmin RN
10/25/2021	12:45	DEV	97 Room Air	Christian, Yazmin RN
10/18/2021	12:52	DEV	98 Room Air	Christian, Yazmin RN

**Weight:**

Date	Time	Lbs	Kg	Waist Circum.	Provider
11/01/2021	12:57	DEV	232.0	105.2	Christian, Yazmin RN

**Exam:****General****Affect**

Yes: Pleasant, Cooperative

**Appearance**

Yes: Appears Well, Alert and Oriented x 3

No: Appears in Pain, Writhing in Pain

**Cardiovascular****Auscultation**

Yes: Regular Rate and Rhythm (RRR), Normal S1 and S2

**ASSESSMENT:**

Essential (primary) hypertension, I10 - Current

**PLAN:****New Medication Orders:**

Rx#	Medication	Order Date
	Lisinopril Tablet	11/01/2021 13:30
<b>Prescriber Order:</b> 5mg Orally Mouth - daily x 180 day(s)		
Indication: Essential (primary) hypertension		

**New Non-Medication Orders:**

Order	Frequency	Duration	Details	Ordered By
Vitals	Weekly	30 days	Please check vitals weekly on Wednesdays	Riley, E. NP-C

Order Date: 11/01/2021

**Disposition:**

Inmate Name: FUSCO, EMILIO	Sex: M	Race: WHITE	Reg #: 02689-748
Date of Birth: 10/09/1968	Provider: Riley, E. NP-C	Facility: DEV	Unit: P03
Encounter Date: 11/01/2021 13:30			

Follow-up at Sick Call as Needed

**Other:**

HTN: Blood pressure consistently elevated. We discussed starting low dose Lisinopril. Lisinopril 5mg daily ordered. Will check BP weekly to monitor effectiveness of medication. Educated to report any adverse side effects.

**Patient Education Topics:**

<u>Date Initiated</u>	<u>Format</u>	<u>Handout/Topic</u>	<u>Provider</u>	<u>Outcome</u>
11/02/2021	Counseling	Plan of Care	Riley, E.	Verbalizes Understanding

**Copay Required:** No

**Cosign Required:** Yes

**Telephone/Verbal Order:** No

Completed by Riley, E. NP-C on 11/02/2021 06:19

Requested to be cosigned by Murray, Scott (MAT) MD.

Cosign documentation will be displayed on the following page.

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**EXHIBIT**

---

**E**

MALE PATTERN RISK SCORING					
Register Number:		02689-748		Date:	
Inmate Name:		FUSCO, E			
MALE RISK ITEM SCORING	CATEGORY	GENERAL SCORE	Enter Score	VIOLENT SCORE	Enter Score
1. Current Age 51-60 Click on gray dropdown box to select, then click on dropdown arrow	> 60	0	7	0	4
	51-60	7		4	
	41-50	14		8	
	30-40	21		12	
	26-29	28		16	
	< 26	35		20	
	2. Walsh w/Conviction No	No		0	
3. Violent Offense (PATTERN) No	Yes	1	0	0	0
	No	0	0	0	0
4. Criminal History Points 2 - 3 Points	Yes	5	0	5	0
	0 - 1 Points	0	8	0	4
	2 - 3 Points	8		4	
	4 - 6 Points	16		8	
	7 - 9 Points	24		12	
	10 - 12 Points	32		16	
	> 12 Points	40		20	
5. History of Escapes None	None	0		0	
	> 10 Years Minor	2	1		
	5 - 10 Years Minor	4	2		
	< 5 Years Minor/Any Serious	6	3		
6. History of Violence > 10 Years Minor	None	0	1	0	1
	> 10 Years Minor	1		1	
	> 15 Years Serious	2		2	
	5 - 10 Years Minor	3		3	
	10 - 15 Years Serious	4		4	
	< 5 Years Minor	5		5	
	5 - 10 Years Serious	6		6	
	< 5 Years Serious	7		7	
7. Education Score HS Degree / GED	Not Enrolled	0	-4	0	-2
	Enrolled in GED	-2		-1	
	HS Degree / GED	-4		-2	
8. Drug Program Status No Need	No DAP Completed	0	-9	0	-3
	NRDAP Complete	-3		-1	
	RDAP Complete	-6		-2	
	RDAP Complete	-9		-3	
	No Need	-9		-3	
9. All Incident Reports (120 months) > 2	0	0	3	0	3
	1	1		1	
	2	2		2	
	> 2	3		3	
10. Serious Incident Reports (120 months) 2	0	0	4	0	4
	1	2		2	
	2	4		4	
	> 2	6		6	
11. Time Since Last Incident Report 12+ months or no incidents	12+ months or no incidents	0	0	0	0
	7-12 months	2		1	
	3-6 months	4		2	
	<3	6		3	
12. Time Since Last Serious Incident Report 12+ months or no incidents	12+ months or no incidents	0	0	0	0
	7-12 months	1		1	
	3-6 months	2		2	
	<3	3		3	
13. FRP Refuse NO	NO	0	0	0	0
	YES	1		1	
14. Programs Completed > 10	0	0	-8	0	-4
	1	-2		-1	
	2 - 3	-4		-2	
	4 - 10	-6		-3	
	> 10	-8		-4	
15. Work Programs > 1 Program	0 Programs	0	-2	0	-2
	1 Program	-1		-1	
	> 1 Program	-2		-2	
Total Score (Sum of Columns)		General:	0	Violent:	5
General/Violent Risk Levels		General:	Minimum	Violent:	Minimum
OVERALL MALE PATTERN RISK LEVEL		Minimum			

DEVNB \* INMATE EDUCATION DATA \* 04-20-2021  
 PAGE 001 \* TRANSCRIPT \* 13:20:40

REGISTER NO: 02689-748 NAME.: FUSCO FUNC: DIS  
 FORMAT.....: TRANSCRIPT RSP OF: DEV-DEVENS FMC

## ----- EDUCATION INFORMATION -----

FACL	ASSIGNMENT DESCRIPTION	START DATE/TIME	STOP DATE/TIME
DEV ESL HAS	ENGLISH PROFICIENT	10-25-2005 1807	CURRENT
DEV GED HAS	COMPLETED GED OR HS DIPLOMA	07-01-2004 0719	CURRENT

## ----- EDUCATION COURSES -----

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
DEV LOW	HISTORY OF WWII	04-01-2021	CURRENT				
DEV LOW	INSPIRING THEMES ACE CLASS 1	02-01-2021	04-20-2021	P	C	P	10
DEV LOW	ACE HISTORY OF BASEBALL	03-01-2021	04-20-2021	P	C	P	18
DEV LOW	RHU ACE FIND A JOB SELFSTUDY	01-01-2021	03-01-2021	P	C	P	10
DEV LOW	ACE HISTORY OF BASEBALL	01-01-2021	03-01-2021	P	C	P	18
DEV LOW	HOW THE GOVERNMENT WORKS ACE	10-01-2020	11-01-2020	P	C	P	5
DEV LOW	PROBLEM SOLVING ACE CLASS	08-01-2020	08-31-2020	P	C	P	8
DEV LOW	EMPLOYMENT RPP2/JOB SKILLS	08-01-2020	08-23-2020	P	C	P	5
DEV LOW	MONEY SMART RPP3/FINANCE	08-01-2020	08-24-2020	P	C	P	5

G0002 MORE PAGES TO FOLLOW . . .

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DEV CY \* INMATE EDUCATION DATA \* 04-19-2021  
 PAGE 002 \* TRANSCRIPT \* 13:40:01

REGISTER NO: 02689-748 NAME...: FUSCO FUNC: DIS  
 FORMAT.....: TRANSCRIPT RSP OF: DEV-DEVENS FMC

----- EDUCATION COURSES -----		START DATE	STOP DATE	EVNT	AC	LV	HRS
SUB-FACL	DESCRIPTION						
DEV LOW	EMPLOYMENT RPP2/JOB SKILLS	08-01-2020	08-23-2020	P	C	P	5
DEV LOW	EMPLOYMENT RPP2/RESUME	08-01-2020	08-23-2020	P	C	P	5
DEV LOW	NEFT RPP1/HLTH	11-24-2019	01-02-2020	P	C	P	10
DEV LOW	INTRO TO NUTRITION	08-19-2019	10-25-2019	P	C	P	10
DEV LOW	MENS HEALTH LEISURE CLASS	08-19-2019	10-25-2019	P	C	P	10
DEV LOW	ANATOMY WELLNESS CLASS	02-25-2019	05-06-2019	P	C	P	10
DEV LOW	FMC DEVENS HEALTH FAIR	02-17-2019	02-17-2019	P	C	P	2
DEV LOW	SPORTS INJURY	09-10-2018	11-12-2018	P	C	P	10
DEV LOW	WEIGHT MANAGEMENT	06-18-2018	08-20-2018	P	C	P	10
DEV LOW	ELECTRONIC LAW LIBRARY TRAININ	12-07-2017	02-14-2018	P	C	P	12
DEV LOW	WEIGHT MANAGEMENT	02-06-2017	04-10-2017	P	C	P	10
DEV LOW	SPORTS INJURY	02-06-2017	04-10-2017	P	C	P	10
DEV LOW	NEFT RPP1/HLTH	02-06-2017	04-10-2017	P	C	P	24
DEV LOW	DISEASE PREVENTION RPP1/HLTH	11-16-2015	01-25-2016	P	C	P	10

G0002 MORE PAGES TO FOLLOW . . .



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DEV CY                   \*                   INMATE EDUCATION DATA                   \*                   04-19-2021  
 PAGE 003               \*                   TRANSCRIPT                   \*                   13:40:01

REGISTER NO: 02689-748                   NAME...: FUSCO                   FUNC: DIS  
 FORMAT.....: TRANSCRIPT               RSP OF: DEV-DEVENS FMC

----- EDUCATION COURSES -----									
SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS		
DEV LOW	ADVANCED DRAWING LEISURE CLASS	10-10-2015	11-09-2015	P	C	P	10		
DEV LOW	BASIC KEYBOARD MONDAY 6PM	08-17-2015	10-05-2015	P	C	P	10		
DEV LOW	BASIC DRAWING LEISURE CLASS	06-29-2015	09-08-2015	P	C	P	10		
DEV LOW	FPC DEVENS HEALTH FAIR-2014	05-27-2015	05-27-2015	P	C	P	2		
DEV LOW	FMC DEVENS HEALTH FAIR-2015	05-27-2015	05-27-2015	P	C	P	2		
DEV LOW	NFPT RPP1/HLTH	03-02-2015	05-25-2015	P	C	P	24		
DEV LOW	DISEASE PREVENTION	03-05-2015	04-30-2015	P	C	P	10		
DEV LOW	INTRO TO NUTRITION	03-02-2015	05-04-2015	P	C	P	10		
DEV LOW	ACE FOOD MGMT ITALIAN	12-08-2014	01-05-2015	P	C	P	10		
DEV LOW	BASIC KEYBOARD MONDAY 6PM	10-27-2014	11-24-2014	P	C	P	10		
DEV LOW	DISEASE PREVENTION	01-08-2015	02-26-2015	P	C	P	10		
DEV LOW	BASIC RESTAURANT RPP2/EMPLOY	11-14-2014	02-05-2015	P	C	P	18		
DEV LOW	FOOD MANAGEMENT/AMERICAN CUIS.	09-17-2014	11-05-2014	P	C	P	12		
DEV LOW	FOOD MANAGEMENT/AMERICAN CUIS.	09-17-2014	11-05-2014	P	C	P	12		

G0002                   MORE PAGES TO FOLLOW . . .

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DEV CY                   \*                   INMATE EDUCATION DATA                   \*                   04-19-2021  
 PAGE 004               \*                   TRANSCRIPT                   \*                   13:40:01

REGISTER NO: 02689-748                   NAME...: FUSCO                   FUNC: DIS  
 FORMAT.....: TRANSCRIPT               RSP OF: DEV-DEVENS FMC

----- EDUCATION COURSES -----									
SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS		
DEV LOW	NFPT RPP1/HLTH	07-21-2014	10-27-2014	P	C	P	24		
DEV LOW	BLOOD PRESSURE WELLNESS CLASS	09-29-2014	10-27-2014	P	C	P	4		
DEV LOW	ADVANCED NUTRITION RPP1/HLTH	07-21-2014	09-22-2014	P	C	P	10		
DEV LOW	HISTORY OF AERIAL COMBAT	06-25-2014	09-10-2014	P	C	P	20		
DEV LOW	BASIC RESTAURANT RPP2/EMPLOY	07-01-2014	08-26-2014	P	C	P	12		
DEV LOW	VISITING PARENT PROGRAM	08-19-2014	08-19-2014	P	C	P	1		
DEV LOW	RPP2/MOCK JOB FAIR	08-06-2014	08-06-2014	P	C	P	3		
DEV LOW	READY TO WORK RPP2/EMPLOY	08-06-2014	08-06-2014	P	C	P	2		
DEV LOW	EMPLOYMENT RPP2/EMPLOY	06-30-2014	07-11-2014	P	C	P	10		
DEV LOW	GETTING IT RIGHT WITH TAXES	05-27-2014	05-27-2014	P	C	P	1		
DEV LOW	UNDERSTAND RECIDIVISM	05-12-2014	05-23-2014	P	C	P	10		
RBK	PR PRE-RELEASE INFORMATION	06-15-2005	12-09-2005	P	C	P	3		
RBK	ENGLISH CASAS LEVEL C X4167	03-01-2005	10-25-2005	P	C	R	159		
RBK	YOGA T/TH8:30AM/MORGAN/X4170	06-28-2005	08-25-2005	P	C	P	16		

G0002                   MORE PAGES TO FOLLOW . . .

PEED

DEV CY                   \*                   INMATE EDUCATION DATA                   \*                   04-19-2021  
 PAGE 005               \*                   TRANSCRIPT                                   \*                   13:40:01

REGISTER NO: 02689-748                   NAME...: FUSCO                                   FUNC: DIS  
 FORMAT.....: TRANSCRIPT               RSP OF: DEV-DEVENS FMC

----- EDUCATION COURSES -----

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
RBK	PR PRE-RELEASE A&O	06-15-2005	06-15-2005	P	C	P	1
RBK	PR PRE-RELEASE A&O	06-15-2005	06-21-2005	P	C	P	3
RBK	PR PRE-RELEASE OVERVIEW	06-15-2005	06-21-2005	P	C	P	3
RBK	PR TYPES OF RELEASES	06-15-2005	06-21-2005	P	C	P	3
RBK	PR COMMUNITY SUPERVISION	06-15-2005	06-21-2005	P	C	P	3
RBK	PR INTELLIGENT MONEY MANAGEMEN	06-15-2005	06-21-2005	P	C	P	1
RBK	PR PUTTING THE BARS BEHIND YOU	06-15-2005	06-21-2005	P	C	P	1
RBK	PR AIDS AWARENESS	06-15-2005	06-21-2005	P	C	P	1
FTD GP	ESL W ADV RM211 M-F 0900-1030	02-13-2004	11-19-2004	P	W	I	201
FTD GP	MAINTAIN SAVINGS ACCT/CAR/HOME	01-28-2004	10-21-2004	C	C	P	1
FTD GP	COMMUNITY CORRECTIONS MGR	01-28-2004	10-15-2004	C	C	P	1
FTD GP	U.S. PROBATION OFFICE	01-28-2004	09-27-2004	C	C	P	1
FTD GP	PARENTING PROGRAM-3 PHASES	05-25-2004	08-17-2004	P	C	P	24
FTD GP	SOCIAL SECURITY ADMIN	06-16-2004	06-16-2004	C	C	P	1

G0002                   MORE PAGES TO FOLLOW . . .

PEED

Page 1 of 1

DEV CY \* INMATE EDUCATION DATA \* 04-19-2021  
 PAGE 006 OF 006 \* TRANSCRIPT \* 13:40:01

REGISTER NO: 02689-748 NAME...: FUSCO FUNC: DIS  
 FORMAT.....: TRANSCRIPT RSP OF: DEV-DEVENS FMC

----- EDUCATION COURSES -----  
 SUB-FACL DESCRIPTION START DATE STOP DATE EVNT AC LV HRS  
 FTD GP CMC RELEASE ISSUES 01-28-2004 05-18-2004 C C P 1  
 FTD GP WEST ESL INTER;M-F; 2:00-3:30 01-07-2004 02-13-2004 C W V 0

----- HIGH TEST SCORES -----  
 TEST SUBTEST SCORE TEST DATE TEST FACL FORM STATE  
 CASAS LIST CERT 221.0 06-18-2004 FTD L54B  
 LIST LEV B 219.0 01-13-2004 FTD L53  
 LIST LEV C 219.0 04-11-2005 RBK C55  
 READ CERT 226.0 10-21-2005 RBK 522  
 READ LEV B 210.0 01-13-2004 FTD 33B  
 READ LEV C 229.0 09-22-2004 FTD 35C  
 READ LEV D 211.0 04-11-2005 RBK D37  
 READ PLACE 206.0 12-18-2003 FTD 3

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

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# EXHIBIT

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F

United States District Court  
Southern District of New York

United States of America,

Plaintiff,

v.

Emilio Fusco

Defendant.

Crim No. 09-CR-1239 (PKC)

Related Compassionate Release Or

Sentence Reduction

Affidavit of David Morrow

Commonwealth of Massachusetts)

)SS.:

County of Hampden )

I, David Morrow, being duly sworn, declare under penalty of perjury that the

following statements are true and correct:

1. I reside at FMC Devens, Unit J.B., PO Box 879 Ayer, MA.

2. I submit this affidavit in support of the Motion of Petitioner Emilio Fusco

Pursuant to 3582(c)(1)(A) for Compassionate Release or Sentence Reduction. I base  
affidavit on personal knowledge, except where otherwise indicated.

3. I am an inmate with diabetes and a stage three kidney disease. I also have a  
below-the-knee amputation on the left leg. I'm confined to a wheel chair. For the past two  
years, Emilio Fusco has been my companion. He helps me to the chow hall three times per

day, as well as to medical, recreation, and other areas of FMC Devens.

I further certify under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C  
Section 1746.

Respectfully submitted this 5 day of August, 2020.

David Morrow

David Morrow  
Inmate No. 21500-076  
FMC Devens, Unit JB  
PO Box 879  
Ayer, MA 01432



United States District Court  
Southern District of New York

United States of America,

Plaintiff,

V.

Emilio Fusco,

Defendant.

Cr. No. 09-CR-1239 (PKC)

Related Compassionate Release Or

Sentence Reduction

Affidavit of Jeffrey Hatcher

Commonwealth of Massachusetts)

)SS.:

County of Hampden )

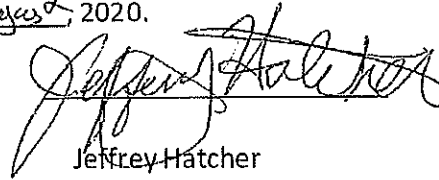
I, Jeffrey Hatcher, being duly sworn, declare under penalty of perjury that the following statements are true and correct:

1. I reside at FMC Devens, Unit JB, PO Box 879, Ayer, Massachusetts
2. I submit this affidavit in support of the Motion of Petitioner Emilio Fusco pursuant to 3582(c)(1)(A) for compassionate release or sentence reduction. I base this affidavit on personal knowledge, except where otherwise indicated.
3. I am an inmate who is confined to a wheel chair with abnormal involuntary movements, hypertension, chronic asthma and other medical problems (muscular atrophy of the lower extremities due to demyelinating disease). Emilio Fusco is the person who always provides me

with substantial help by giving me emotional support and by getting my meals and pushing me around the unit.

I further certify under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C. Section 1746.

Respectfully submitted this 5 day of August, 2020.

A handwritten signature in black ink, appearing to read "Jeffrey Hatcher", is written over a horizontal line. To the right of the signature, the number "83431-020" is handwritten.

Jeffrey Hatcher  
Inmate No. 83431-020  
FMC Devens, Unit JB  
PO Box 879  
Ayer, MA 01432

**United States District Court  
Southern District of New York**

**United States of America,**

**Plaintiff,**

**v.**

**Emilio Fusco**

**Defendant.**

Cr. No. 09-CR-1239 (PKC)

Related Compassionate Release Or

Sentence Reduction

Affidavit of Francisco Pagan Mora

Commonwealth of Massachusetts)

)SS.:

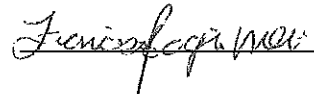
County of Hampden )

I, Francisco Pagan Mora, being duly sworn, declare under penalty of perjury that the following statements are true and correct:

1. I reside at FMC Devens, Unit JB, PO Box 879, Ayer, Massachusetts.
2. I submit this affidavit in support of the Motion of Petitioner Emilio Fusco pursuant to 3582(c)(1)(A) for compassionate release or sentence reduction. I base affidavit on personal knowledge, except where otherwise indicated.
3. I am an inmate who suffers from paraplegia, major depressive disorder and other health problems. Recently, Emilio Fusco has been helping me with my depression, and provides me with support by lifting any heavy objects inside our housing unit, JB.

I further certify under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.  
Section 1746.

Respectfully submitted this 5 day of August, 2020.

A handwritten signature in cursive script, appearing to read "Francisco Pagan Mora", written over a horizontal line.

Francisco Pagan Mora  
Inmate No. 48767-069  
FMC Devens, Unit JB  
PO Box 879  
Ayer, MA 01432

United States District Court  
Southern District of New York

-----  
**United States of America,**

**Plaintiff,**

**V.**

**Emilio Fusco,**

**Defendant.**  
-----

Cr. No. 09-CR-1239 (PKC)

Related Compassionate Release Or

Sentence Reduction

Affidavit of Oswaldo Ornelas

Commonwealth of Massachusetts)

) SS.:

County of Hampden )

I, Oswaldo Ornelas, being duly sworn, declare under penalty of perjury that the following statements are true and correct:

1. I reside at FMC Devens, Unit JB, PO Box 879, Ayer, Massachusetts.
2. I submit this affidavit in support of the Motion of Petitioner Emilio Fusco pursuant to 3582(c)(1)(A) for compassionate release or sentence reduction. I base affidavit on personal knowledge, except where otherwise indicated.
3. I am an inmate with a diabetes condition and kidney disease who is confined to a wheelchair. Emilio Fusco has been helping me get to all of my appointments. He sits down with me every day through my stress and helps me in filing legal matters for compassionate release.

I further certify under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.  
Section 1746.

Respectfully Submitted this 13 day of AUG, 2020.

Oswaldo Ornelas

Oswaldo Ornelas  
Inmate No. 52320-298  
FMC Devens, Unit JB  
PO Box 879  
Ayer, MA 01432

United States District Court  
Southern District of New York

**United States of America,**

**Plaintiff,**

**V.**

**Emilio Fusco,**

**Defendant.**

Cr. No. 09-CR-1239 (PKC)

Related Compassionate Release Or

Sentence Reduction

Affidavit of Wilfredo Florez

Commonwealth of Massachusetts)

)SS.:

County of Hampden )

I, Wilfredo Florez, being duly sworn, declare under penalty of perjury that the following statements are true and correct:

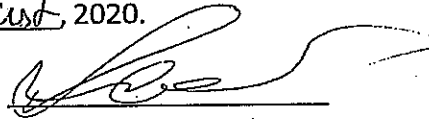
1. I reside at FMC Devens, Unit JB, PO Box 879, Ayer, Massachusetts.
2. I submit this affidavit in support of the motion of Petitioner Emilio Fusco pursuant to 3582(c)(1)(A) for compassionate release or sentence reduction. I base this affidavit on personal knowledge, except where otherwise indicated.
3. I am an inmate at FMC Devens who suffers from polyneuropathy malignant disease, eye problems and other complications. Emilio Fusco helps me out by filing paperwork related to compassionate release.



I further certify under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.

Section 1746.

Respectfully Submitted this 5 day of August, 2020.

A handwritten signature in black ink, appearing to read 'Wilfredo Florez', written over a horizontal line.

Wilfredo Florez  
Inmate No. 40421-018  
FMC Devens, Unit JB  
PO Box 879  
Ayer, MA 01432

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# EXHIBIT

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# G

# Judges eased terms over virus, jail woes

BY STEPHEN REX BROWN  
AND NOAH GOLDBERG  
NEW YORK DAILY NEWS

Federal judges handed down dozens of lighter sentences due to brutal conditions in the city's federal jails during the coronavirus pandemic, new statistics obtained by the Daily News show.

A Daily News analysis of 43 cases involving people who could not afford their own attorneys shows that judges in Manhattan and Brooklyn federal courts imposed sentences that were on average 58% lower than what federal guidelines recommended.

In nearly all of the cases, judges either cited coronavirus conditions behind bars in their sentences, or attorneys emphasized the conditions in legal briefs.

In one case in July 2020, Judge Paul Engelmayer noted that punishment for Juan Carlos Aracena De Jesus' illegal reentry into the U.S. after being deported was never supposed to include catching coronavirus.

"I am mindful ... that you have served most of your time in prison so far during the worst pandemic in this country during the past 100 years," Engelmayer said. "I'm mindful that your experience in prison as a result of the pandemic, the preceding lockdown, the ensuing lockdown and your own illness was frightful. Prison is supposed to be punishment, but it is not supposed to be trauma of that nature or close."

While the sentencing guidelines in the case was for 30 to 37 months, Engelmayer sentenced Aracena to time served. He had spent six months at the Metropolitan Correctional Center (photo) in Manhattan.

Judge Paul Oetken went so far as to come up with a formula for how much credit inmates should receive toward a sentence if they were behind bars during the pandemic.

"I do believe that because it's been harsher than a usual period that it's more punitive, that it's essentially the equivalent of either time and a half or two times what would ordinarily be served," Oetken said on April 2 while sentencing a low-level crack dealer.

The sentence amounted to time served for the dealer, Daniel Gonzalez, who said he has a recurring foot

infection due to unsanitary showers at MCC.

In all the cases, COVID was not the sole factor judges used to determine sentences. Judges also considered an inmate's health, the nature of the crime and other factors. For Victor Marmolejo, 47, the risk of deadly consequences from his diabetes resulted in him receiving an 18-month sentence when prosecutors had asked for up to four years.

"My brother got a low sentence because of his health issues. He had very bad diabetes and he never got COVID, but he was going to be at risk of getting COVID if he stayed there. That's what the judge said," his sister, Tatiana Marmolejo, said. "It was difficult ... The conditions where they were isolated were horrible."

Lawsuits have alleged that coronavirus ravaged the MCC in Manhattan and the Metropolitan Detention Center in Brooklyn and that staff failed to implement common-sense preventive measures. Inmates, meanwhile, were kept in lockdown and had limited or no access to family and their attorneys.

Judges have become unusually outspoken about problems at the MCC and MDC since the pandemic began.

Even lawyer Michael Avenatti, who became famous for his legal battles with former President Donald Trump, got a break due to COVID conditions at MCC. "Conditions were terrible. Hard to believe they could occur in the United States," Judge Paul Gardephe said before imposing a 2½-year sentence.

The head of the Federal Defenders in Brooklyn, Deirdre Von Dornum, said the cases where incarcerated pretrial detainees received shorter-than-guidelines sentences based on medical and jail conditions were "far more" than they usually get. "COVID-19 did not change the sentencing calculus. Consistent with governing sentencing law, judges have always taken medical conditions and medical risks into account. What changed was the breadth and depth of this medical crisis and the clear inability of MDC and MCC to protect those in their custody and care who had preexisting medical conditions," Von Dornum said.





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United States



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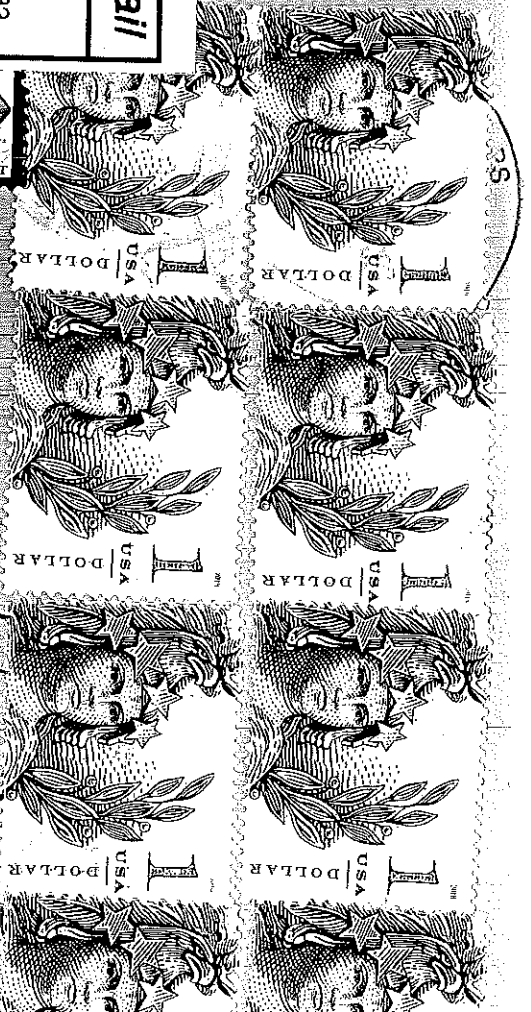


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Clerk Of The Court  
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U.S. District Courthouse  
NEW YORK, NY 10007  
United States